

**STATE OF FLORIDA
AUDITOR GENERAL**



***OPERATIONAL AUDIT
OF THE***

***FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.,
Direct-Support Organizations of the
Brevard Community College District Board of Trustees***

***For the Period July 1, 1994, Through June 30, 1997,
And Selected Actions of the Organizations
Taken From June 10, 1991, Through June 30, 1994***

Dated: March 23, 1998

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AND
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AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.***

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STATE OF FLORIDA
AUDITOR GENERAL
TALLAHASSEE

CHARLES L. LESTER, CPA
AUDITOR GENERAL

March 23, 1998

The President of the Senate, the Speaker of the
House of Representatives, and the
Legislative Auditing Committee

Pursuant to the provisions of Section 11.45, Florida Statutes, and as directed by the
Joint Legislative Auditing Committee, I have directed that an operational audit be made of the

***FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.,
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***For the Period July 1, 1994, Through June 30, 1997,
and Selected Actions of the Organizations
Taken From June 10, 1991, Through June 30, 1994.***

The results of the audit of the Florida Education and Research Foundation, Inc., and the
Brevard Teaching and Research Laboratories, Inc., are presented herewith.

Respectfully submitted,

A handwritten signature in cursive script that reads "Charles L. Lester".

Charles L. Lester
Auditor General

Audit supervised by:
James M. Dwyer

Audit made by:
Charles E. McClellan

**OPERATIONAL AUDIT
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**For the Period July 1, 1994, Through June 30, 1997,
and Selected Actions of the Organizations
Taken From June 10, 1991, Through June 30, 1994**

AUDIT REPORT SUMMARY

This audit report summary highlights the scope, objectives, methodology, and findings of audit report No. 13170, dated March 23, 1998. It is intended to present the findings of our report in a condensed fashion. The entire audit report should be read for a comprehensive understanding of our audit findings.

SCOPE/OBJECTIVES

The Auditor General, as part of the Legislature's oversight responsibility for operations of State and local government agencies and related organizations, makes operational audits to evaluate management's performance in administering assigned responsibilities in accordance with applicable laws, administrative rules, and other guidelines and to determine the extent to which the internal control, as designed and placed in operation, promotes and encourages the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of financial records and reports, and safeguarding of assets.

The scope of this audit of the Florida Education and Research Foundation, Inc., and the Brevard Teaching and Research Laboratories, Inc., focused primarily on actions and transactions of these organizations for the period July 1, 1994, through June 30, 1997, and selected actions of the organizations taken from June 10, 1991, through June 30, 1994.

METHODOLOGY

We conducted our audit in accordance with generally accepted auditing standards and applicable standards contained in *Government Auditing Standards* issued by the Comptroller General of the United States.

FINDINGS

Matters coming to our attention relating to noncompliance with various guidelines and those relating to significant deficiencies in the design or operation of the internal control for those operations audited are as follows:

The scope of this audit included a determination of the extent to which the internal controls of the Florida Education and Research Foundation, Inc. (FERF), and the Brevard Teaching and Research Laboratories, Inc. (BTRL), promoted and encouraged the achievement of management's objectives in the areas of compliance, economic and efficient conduct of operations, reliability of financial records and reports, and safeguarding of assets. In making this determination, our audit disclosed that the internal control environment established for these organizations was not conducive to the accomplishment of these objectives. Most significantly, we noted several conditions which limited the assurance that activities and transactions of the organizations, which have been designated as direct-support organizations of Brevard Community College (BCC), were conducted at arms-length and in the best interests of the organizations, BCC, and the State. These conditions included: actions taken in apparent violation of the Sunshine Law; transactions with entities that shared directors or officers; a lack of competitive procedures for the selection of contractors, consultants, and vendors; inadequate documentation of services provided by consultants; duplicate payments for equipment; receipt of contributions and loans from contractors, consultants, and vendors with whom the organizations conducted business; and a lack of a documented basis for management or Board of Directors approval for certain actions. It is apparent from the existence of these material internal control weaknesses and the findings included in this report that the activities of FERG and BTRL have not been subjected to adequate and effective oversight. (See paragraphs 27 through 31.)

Sunshine Law

Our review of the records of FERF disclosed that on 13 occasions actions of the FERF Board of Directors were taken by unanimous consent of the Board members without holding meetings. Such actions included approval of bond resolutions; authorization of the sale of land; appointment of Board members and acceptance of resignation of Board members; amendment of by-laws to increase Board membership; approval of a bank loan for the purchase of a vehicle; and authorization to enter into contracts. Also, BTRL Board meetings prior to November 1995 and FERF Board meetings prior to April 1996 were not noticed. These actions appear to have been in violation of the Sunshine Law. (See paragraphs 32 through 36.)

Policies and Procedures

Our review of the operations of FERF and BTRL disclosed that these entities did not have written policies and procedures for many of their functions, including their accounting and related business functions, for extended periods of time during which many of the actions discussed in this report took place. For example, adequate written policies and procedures were not available to document controls over payroll and personnel expenses, procurement of goods and services, and disbursement activities. (See paragraphs 37 through 40.)

Budgetary Controls

Budgets for BTRL were provided for our review for the 1993-94, 1994-95, 1995-96, and 1996-97 fiscal years; however, no budget amendments were prepared and submitted to the BTRL Board of Directors for any of those fiscal years. Additionally, no comparisons of budgeted revenues and expenses to actual revenues and expenses were submitted to the BTRL Board of Directors.

Total budgeted expenses exceeded the total actual reported expenses for the 1994-95 and 1995-96 fiscal year; however, for the 1993-94 fiscal year, total actual expenses (\$910,393) exceeded total budgeted expenses (\$747,070) by \$163,323. Also, total budgeted revenues substantially exceed total actual revenues for each fiscal year. Because budgeted revenues are a major factor in the estimation of resources that will be available for use in the ensuing fiscal year, overly optimistic

estimates of revenues in comparison to actual revenues can and have resulted in shortfalls in available resources. Additionally, the budgets did not include the effects of prior year deficit fund balances. Failure to consider necessary changes in revenue estimates and prior year deficits may have contributed to the deficits reported by the BTRL and the resulting need for funding by the BCC. (See paragraphs 41 through 46.)

Related-Party Transactions

Our audit disclosed numerous contractual relationships and transactions among FERF, BTRL, BCC, and other organizations which shared Board members, officers, or employees with these organizations. These relationships and the sharing of Board members may have resulted in transactions involving FERF and BTRL that were not made at arm's length and in the best interests of BCC and the State.

These transactions are of even greater concern when considered together with the lack of documentation of competitive vendor selection procedures in the selection of the corporations to provide services and the lack of documentation for the services actually provided. Further, given the nature of these related-party activities and the lack of documentation of actions taken and transactions conducted, there is the potential that results of a review of the activities by the Internal Revenue Service could jeopardize the not-for-profit status of these organizations, or the tax exempt status of debt issues, under the United States Internal Revenue Code and Florida Statutes. (See paragraphs 47 through 53.)

General Disbursements

Our audit disclosed numerous expenditures by FERF and BTRL for which the authorized public purpose contemplated to be served by the expenditures had not been demonstrated in the records or which were not adequately documented as to the application of necessary controls designed to assure that the goods and services were actually received and were acquired at the lowest cost commensurate with quality considerations.

In the absence of supporting documentation to demonstrate the legal authority, public purpose, and demonstrable benefit provided to BCC and the State of Florida, the FERF and BTRL Boards of Directors could not be assured as to their propriety. (See paragraphs 56 through 63.)

Duplicate Payments

In audit report No. 12356, paragraphs 36 through 44, we noted that effective controls were not exercised over the equipment purchases made under the arrangements among BCC, BTRL, and Indian River Region Environmental Institute (IRREI). Specifically we noted: (1) the contract between BCC and BTRL had not been approved by the BCC's Board of Trustees and the contract was general in nature and did not specify the manner in which services would be provided; (2) there was nothing of record authorizing any delegation of purchasing authority to BTRL or IRREI or specifying the procedures to be followed by those organizations; (3) there was no indication that any of the items were purchased pursuant to bids or combined for bid purposes; and (4) the purchases were not adequately supported by BCC purchase orders, receiving reports, and invoices. Our audit of BTRL disclosed that \$66,258.16 of purchases billed to BCC by IRREI and paid by BCC during the period from January 1992 to December 1992 were also billed to BCC by BTRL and paid by BCC during the period from July 1992 to February 1993.

On November 17, 1997, the BCC Vice-President for Business Affairs filed a claim with the Florida Community College Risk Management Consortium indicating that "Brevard Community College has been hit with a series of duplicate payments which resulted in the college losing \$66,953.33." (See paragraphs 64 through 70.)

High Efficiency Chiller Purchase

A BCC internal audit report dated June 30, 1997, questioned the purchase of a high efficiency chiller for the BTRL clean room facility using Florida Department of Community Affairs' grant funds. The information provided in the internal audit report indicated that actions were taken to represent falsely that grant terms had been met in the acquisition of the chiller. (See paragraphs 71 through 73.)

Contributions from Vendors and Consultants

Our audit disclosed that numerous contributions (totaling approximately \$75,900) and loans (totaling \$5,400) were received by FERF from consultants and vendors doing business with FERF or BTRL. The loans and contributions were made directly to FERF by the consultants and vendors and recorded in the accounting records of FERF.

The receipt of contributions and loans from consultants and vendors doing business with an organization or a related organization raises a question regarding the propriety of the transactions between the organization and the consultants and vendors. While it is generally not possible on postaudit to determine the existence of any relationship between the business transactions and the loans or contributions, such contributions and loans, together with the cited lack of competitive vendor or consultant selection procedures and lack of adequate documentation of goods or services provided, could indicate a circumvention of the controls normally associated with the conduct of business by arm's length transactions between independent parties. (See paragraphs 74 through 76.)

Motor Vehicles

Our review disclosed that FERF obtained at its cost a vehicle that was used by the former President of FERF. There was nothing of record to indicate that FERF considered and documented the basis for determining: (1) the need to acquire the vehicle; (2) the type of vehicle that would best serve FERF's needs as compared to the costs; and (3) the manner of acquiring the vehicle at the least cost to FERF. We also noted that the vehicle subsequently was sold to the former President of FERF without consideration of whether the vehicle could have been sold at a higher price by open bid or other competitive procedure. (See paragraphs 77 through 83.)

Travel Expenditures

Our examination of travel expense reimbursements disclosed questionable travel reimbursements totaling \$1,611.50 to the former FERF President. These reimbursements were included in payments to the former FERF President totaling \$2,424.00 for 10 trips, primarily to Tallahassee, during the period from December

1994 through June 1995. Nine of the reimbursements were made from BTRL accounts and one was made from a BCC account. Since the vehicle used by the former FERF President was leased by FERF at that time, it appears to be inappropriate for BTRL to pay the mileage expenses for travel by the former President. (See paragraphs 84 through 87.)

Bonded Debt

On October 1, 1994, the City of Palm Bay issued Lease Revenue Bonds (Series 1994A) in the amount of \$8,955,000 and Taxable Lease Revenue Bonds (Series 1994B) in the amount of \$140,000 and loaned the proceeds to the Florida Education and Research Foundation, Inc. (FERF), to finance the acquisition of 44 acres of land by FERF and the development and construction of a 35,000 square foot building. On April 1, 1995, the City issued Lease Revenue Refunding Bonds (Series 1995A) in the amount of \$9,360,000. The proceeds of this issue were used to refund the Series 1994A bonds at par of \$8,995,000, pay a three percent redemption premium of \$268,650, pay \$100,000 into the interest fund, and pay \$36,350 into the expense fund to cover certain costs of issuance. The result of these debt issues is that debt of \$9.5 million (\$140,000 and \$9,360,000) was incurred and must be repaid in order to generate only \$6.27 million for land and facilities acquisition.

The 1995A bond issue dated April 1, 1995, in the amount of \$9,360,000 (to refund the \$8,955,000 issue) was rated by Moody's Investors Service as "Baa" or medium investment grade bonds and carried interest rates ranging from 6.1 to 7.0 percent. According to Moody's Investors Service, the basis for the rating was a resolution passed by the BCC Board of Trustees on January 23, 1995, which stated:

"The Board of Trustees hereby covenants to use its best efforts, in its sole judgement, to provide for the Lease Payments in each annual proposed budget within the restricted fund category. . . ."

Based on our review of the Moody's *Daily Recap* dated March 24, 1995, and the more detailed *Credit Report* dated March 27, 1995, it is apparent that the bond rating of "Baa" was based, at least in part, on the BCC resolution.

In our audit report No. 13000, paragraph 49, on BCC, dated May 28, 1997, we noted that substantial payments were made by BCC to BTRL and we questioned whether it was the intent of the Legislature to authorize colleges to routinely pay significant operating costs of a college's direct-support organization without reimbursement.

In October 1997, Moody's Investors Service lowered its rating on the 1995A bonds to a "Ba" rating. According to Moody's Investors Service, bonds which are rated "Ba" are said to have speculative elements and their future cannot be considered as well assured. (See paragraphs 88 through 96.)

Bond Issuance and Other Related Costs

The amount of bond proceeds expended for direct project costs or deposited for payment on the bonds represents only 80 percent of the total amounts disbursed as a result of the bond issues (64 percent for the bond project, \$6,270,498.19, and 16 percent deposited to debt service and interest funds, \$1,570,008.51), while the issuance and other costs on the bond issue was 20 percent, which is excessive. In light of the significant costs incurred to issue this debt, it is not evident on what basis the determination was made that this debt financing was in the best economic interest of the public, BCC, and BTRL. (See paragraphs 98 through 101.)

Unauthorized Use of Bond Funds

The bond indentures for the bond issues included provisions specifying the proper uses of the bond proceeds and interest earned thereon. These uses, as set forth in Article 5 of the Bond Indenture included interest on the bonds, prepaid lease payments, redemption of the refunded bonds, issuance costs, and project costs. The amounts paid from the proceeds and interest for these bond issues included several amounts totaling \$251,613.61 for which documentation was not available to demonstrate that they were related to the purposes for which the bonds were issued and included in the project budget. (See paragraphs 102 through 107.)

Selection of Underwriters, Construction Manager, and Other Service Providers

The underwriter for the bond issues was paid \$900,214.27 for fees, expenses, an underwriter's discount, and a redemption premium and \$372,067.82 for accrued interest earned on the bond proceeds while the bonds were held by the underwriter. The architect and the construction manager for the construction of the Brevard Laboratories facility were paid \$319,914.83 and \$2,347,104.15, respectively, from the proceeds of the bond issues. Additionally, a total of \$1,980,167.24 was paid to various vendors or contractors for materials and labor related to completion of the project facilities. In addition to the underwriter, architect, and construction manager, our review of the payments made from the bond proceeds and related interest earnings disclosed payments totaling \$733,330.72 to several professionals, including attorneys, financial advisors, and a development consultant, for services rendered in connection with the bond issues.

Our review of bond-related FERF documents provided for our examination disclosed no indications of the use of competitive selection procedures for securing the services of the underwriter, the architect, the construction manager, and the other professionals. Our review of FERF records did not disclose the basis used by FERF in deciding that noncompetitive negotiated sales were appropriate for the issues and that competitive selection of the architect, construction manager, and other consultants were unnecessary. Additionally, the Vice-President for Business Affairs, at our request, obtained from the construction manager documentation of quotes received by the construction manager for various materials and labor related to construction of the project facilities. However, records were not available to evidence that this documentation had been reviewed by BCC or BTRL personnel and that appropriate bid procedures had been applied in the selection of the vendors and contractors who were paid for materials and labor.

Competitive selection procedures are generally used to provide objective assurance that the best services and interest rates are obtained at the lowest possible cost and to demonstrate that selection procedures are free of self-interest and personal or political influences. Furthermore, competitive practices reduce

the opportunity for fraud and abuse, and are fair to competing finance professionals. The lack of competitive selection procedures, in combination with a lack of contracts and inadequate documentation of services provided, provides very little assurance in this regard. (See paragraphs 108 through 111.)

Lease-Purchase Agreement

BTRL is responsible for accumulating resources to meet the debt service requirements on the bonds issued for the Brevard Teaching and Research Laboratories project by the terms of its Lease-Purchase Agreement with FERF. However, as evidenced by the deficit fund balances accumulated by BTRL and the support provided to BTRL by BCC, it is apparent that adequate consideration was not given to the ability of BTRL to accumulate resources adequate to meet the debt service requirements. The primary source of revenues of BTRL is laboratory user fees.

While BTRL, under the terms of the Lease-Purchase Agreement, initially leased 44 acres from FERF, and therefore was responsible for funding the entire debt service for the bond issue, BTRL was utilizing only a 3.7 acre parcel of land on which the laboratory facility was constructed. As a result of the sale or other disposition, the land under lease to BTRL has been reduced; however, BTRL is still paying for debt service on 32.28 acres of land which is well in excess of the value of goods received and utilized. Because of the excessive acreage included in the Lease-Purchase Agreement, as well as the excessive load on the debt issue, BTRL is responsible for making lease payments in amounts that significantly exceed the value of the assets being utilized. (See paragraphs 112 through 114.)

BCC provided support totaling \$3,065,042 to BTRL through June 30, 1997, to supplement BTRL's other revenues and pay the costs of operations of the laboratories and the debt service. Our review of the records of FERF and BTRL and the official bond documents disclosed no feasibility studies or market surveys conducted to assess the ability of BTRL to generate sufficient revenues from user fees or other sources to provide for the cost of operations and debt service requirements.

In view of the levels of revenues generated by BTRL and the levels of support provided to BTRL by BCC, it appears that the bonds were issued and the Lease-Purchase Agreement entered into without adequate consideration as to the ability of BTRL to fund the debt service. (See paragraphs 115 through 118.)

Land Transactions

Our audit disclosed that FERF executed several real estate transactions without obtaining real estate appraisals. Additionally, minutes of FERF Board meetings did not clearly evidence the Board's consideration of the reasons for these transactions and how these actions were expected to benefit BCC and its missions.

Good business practices dictate that real estate appraisals should be obtained prior to any decision to sell, purchase, or exchange real estate; however, we have not been provided with any appraisals of the bond land. The establishment of a minimum sales price of \$43,260 per acre (including redemption premium) for the bond land presumed that the land could be sold for that amount. The proceeds of such sales are to be paid into the Land Sale Redemption account to reduce the debt owed by BTRL which, under the terms of its Lease-Purchase Agreement with FERF, is responsible for the debt service on all of the lands. To enable BTRL to meet its obligation, it is important that this land be sold and the debt reduced accordingly. However, the only releases of the bond land to date were made through the purchase/exchange of 9.92 acres between Parrish Medical Center and BCC and the 1.8 acres released for the Clean Room.

Our review of the real estate market around the Palm Bay campus indicated that the real estate market, which peaked in 1992 or 1993, is well below the \$43,260 per acre required minimum purchase price. In purchasing the property, FERF may have relied on some appraisals obtained by BCC for property purchased by BCC in the same area; however, it is apparent that the value of the remaining bond land is currently less than the required minimum price of \$43,260, making disposition of the property at that price very difficult. (See paragraphs 119 through 126.)

Use of College Facilities

As direct-support organizations of BCC, FERF and BTRL are authorized to use BCC facilities. However, examination of the activities of FERF and BTRL disclosed several other corporations that listed the same address on corporate filings, but had not been designated as direct-support organizations.

One of these organizations, the Indian River Region Environmental Institute, Inc. (IRREI), had entered into an agreement with BCC to provide certain services to BCC. This agreement provided for IRREI to utilize BCC facilities. Because no value was placed on the services to be provided or the use of BCC facilities, we were precluded from determining whether the BCC was providing use of facilities on a commensurate basis with the services provided by IRREI. No such contracts with the other organizations were provided for our review. While the scope of our audit did not include the activities, if any, of the remaining organizations, we did note that the officers and directors of several of these organizations were also officers and directors of FERF and BTRL and that some of these organizations had contractual relationships with BCC. In the absence of direct-support organization designations for these corporations, we are unaware of any authority for their use of BCC facilities. (See paragraphs 127 through 129.)

The written responses to the audit findings and recommendations included in audit report No. 13170 are presented as Exhibit F.

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Par.
No.

REPORT ON COMPLIANCE AND INTERNAL CONTROL

- (1) Florida Education and Research Foundation, Inc., and Brevard Teaching and Research Laboratories, Inc., management are responsible for administering numerous operating units, programs, activities, functions, and classes of transactions in accordance with governing provisions of laws, Articles of Incorporation, and other guidelines. Additionally, the proper administration of public funds requires that management establish and maintain a system of internal control to provide reasonable assurance that specific entity objectives will be achieved. The Auditor General, as part of the Legislature's oversight responsibility for operations of State and local government agencies and related organizations, makes operational audits to determine the extent to which management has fulfilled those responsibilities.
- (2) The scope of this audit focused primarily on revenues and cash receipts, budgetary controls, expenditures, procurement of good and services, property and equipment, land acquisitions, leases, and long-term debt. For each of these areas, our audit included examinations of various transactions (as well as events and conditions) during the period July 1, 1994, through June 30, 1997, and selected actions of the organizations taken from June 10, 1991, through June 30, 1994.
- (3) We conducted our audit in accordance with generally accepted auditing standards and applicable standards contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Our audit objectives for the operating units, programs, activities, functions, and classes of transactions within the scope of audit were:

- To evaluate the organizations' performances in administering their assigned responsibilities in accordance with applicable laws, Articles of Incorporation, and other guidelines.
 - To determine the extent to which the organizations' internal control promotes and encourages the achievement of management's objectives in the categories of compliance with applicable laws, Articles of Incorporation, and other guidelines; the economic and efficient operation of the organizations, the reliability of financial records and reports; and the safeguarding of assets.
 - To determine whether the organizations have corrected, or are in the process of correcting, all deficiencies disclosed in prior audit reports issued by independent certified public accountants.
- (4) As a part of our audit, we examined, on a test basis, evidence supporting transactions (as well as events and conditions) which occurred; performed analytical procedures; reviewed management's administrative constructions of law; and performed such other procedures as we considered necessary in the circumstances. Our objective was to evaluate management's compliance with significant provisions of laws, Articles of Incorporation, and other guidelines governing those operating units, programs, activities, functions, and classes of transactions within the scope of audit. However, providing an opinion on compliance with those provisions was not an objective of our audit.
- (5) The results of our tests of compliance indicated that, with respect to the items tested, the organizations in many respects had not complied with significant provisions of laws, Articles of Incorporation, and other guidelines governing those operating units, programs, activities, functions, and classes of transactions within the scope of audit. Matters coming to our attention relating to noncompliance with various guidelines for those operations audited are noted in the ***FINDINGS AND RECOMMENDATIONS*** section of this report.
- (6) In planning and performing our audit, we considered the organizations' internal control relevant to those operating units, programs, activities, functions, and classes of transactions within the scope of audit. Our purpose in considering internal control was to determine the nature, timing, and extent of substantive audit tests and procedures necessary to the accomplishment of our audit objectives, not to provide assurance on internal control.

- (7) We noted certain matters involving the design and operation of the organizations' internal control that we consider to be reportable conditions. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of internal control that, in our judgment, could, and did, adversely affect management's assurance of compliance with applicable laws, Articles of Incorporation, and other guidelines; the economic and efficient operation of the organizations; the reliability of financial records and reports; and the safeguarding of assets. Those matters coming to our attention for the operating units, programs, activities, functions, and classes of transactions within the scope of audit are noted in the *FINDINGS AND RECOMMENDATIONS* section of this report.
- (8) A material weakness is a condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that operating deficiencies, material in relation to the financial records and resources of the operating units, programs, activities, functions, and classes of transactions being audited, may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. Our consideration of internal control would not necessarily disclose all matters in the organizations' systems of internal control that might be reportable conditions and, accordingly, would not necessarily disclose all reportable conditions that are also considered to be material weaknesses. However, we believe that the reportable conditions described in the *FINDINGS AND RECOMMENDATIONS* section of this report collectively constitute material weaknesses in internal control.
- (9) This report is intended for the information of the Legislative Auditing Committee, members of the Florida Senate and the Florida House of Representatives, and applicable management. Copies of this report are available pursuant to Section 11.45(7), Florida Statutes, and its distribution is not limited.

BACKGROUND

- (10) As directed by the Joint Legislative Auditing Committee (JLAC) at its June 19, 1997, meeting, the scope of this audit included activities of the Florida Education and Research Foundation, Inc. (FERF), and the Brevard Teaching and Research Laboratories, Inc. (BTRL), both of which have been designated as direct-support organizations of the District Board of Trustees of the Brevard Community College. The JLAC also requested that the scope of the audit include two other organizations, Florida Education and Redevelopment Foundation, Inc. (Foundation), and the Foundation Park Manufacturing Center # 1, a Florida Limited Liability Company (FPMC). We were informed by the individual serving as both President of the Foundation and Vice-President of the FPMC that these two organizations had no transactions other than as described in paragraph 25, and, therefore, there are no records to audit. Our examination of the records of FERG and BTRL did not disclose any transactions related to the Foundation and the FPMC. Our review, however, did disclose a number of transactions with other related parties which are discussed in other sections of this report.
- (11) According to a FERG publication issued in February 1994, entitled *Foundation Park – A View of the Future*, FERG was created for the purposes of enhancing the development of the Palm Bay Campus of Brevard Community College and supporting the growth, scope, and development of Brevard Teaching and Research Laboratories. According to the publication, Foundation Park is intended to be a secondary campus to Brevard Community College’s Palm Bay Campus, to be planned jointly with a State university offering 2 + 2 programs to enable students to obtain four-year degrees from a university. The Park is planned to be developed in six phases which include acquisition of the land adjacent to the Palm Bay Campus and construction of several facilities thereon, including Brevard Community College’s Brevard Teaching and Research Laboratories facility. As discussed in paragraph 20, BTRL was established to assist Brevard Community College (BCC) in the operation, maintenance, and management of the Brevard Teaching and Research Laboratory facility.
- (12) In 1993 FERG obtained options from Atlantic Gulf Communities Corporation for the purchase of 162.33 acres of land adjacent to BCC’s Palm Bay Campus (see Exhibit D). As a result of several transactions involving this land, which are described in paragraphs 119 through 126, BCC acquired approximately 35 acres of this land, 5.63 acres were sold to a private corporation, and the rest is titled to FERG, including 3.7 acres on which the Brevard Teaching

and Research Laboratories facility is located and 1.8 acres on which the “Clean Room” is being constructed (see paragraphs 120 and 121). The “Clean Room,” which is scheduled for completion in early 1998, will provide a dust free environment in which to conduct tests for flat panel displays and other purposes (see Exhibit E).

- (13) On October 1, 1994, the City of Palm Bay, issued, as a conduit issuer on behalf of FERF, tax exempt lease revenue bonds and taxable lease revenue bonds totaling \$8,955,000 and \$140,000, respectively, for the acquisition of approximately 44 acres of the land under the FERF option contract and the construction of the Brevard Teaching and Research Laboratories facility. Tax exempt refunding bonds in the amount of \$9,360,000 were issued on April 1, 1995, to refund the \$8,955,000 issue. FERF contracted for construction of the laboratories facility and a lease agreement was entered into between FERF and BTRL whereby BTRL is required to make lease payments to FERF over a period of 30 years in an amount sufficient to make the required debt service payments. After 30 years, title to the facility passes to the District Board of Trustees of BCC. It was expected that the laboratory facility would be able to generate sufficient resources through the assessment of user fees to make the required lease payments to FERF; however, in audit report No. 13000, paragraph 39, we disclosed that as of June 30, 1996, BCC had provided funding for BTRL operations in the amount of \$1,789,345. Our current review disclosed that as of June 30, 1997, BCC had provided support of \$3,065,042 in the form of appropriations, temporary cash advances, loans, and personnel costs. Our review also indicated that BCC is continuing to subsidize BTRL operations in the 1997-98 fiscal year.
- (14) Our findings and recommendations relating to these and other related activities of FERF and BTRL are included under appropriate subheadings in the ***FINDINGS AND RECOMMENDATIONS*** section of this report.

Authority

The Florida Education and Research Foundation, Inc.

- (15) The Florida Education and Research Foundation, Inc. (FERF), was established as a not-for-profit corporation under the provisions of Chapter 617, Florida Statutes, on September 13, 1991. According to its Articles of Incorporation, the purposes for which FERF is organized are within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, which includes charitable, scientific, and educational purposes. The specific purposes of

FERF, as set forth in the Articles of Incorporation, are to prepare, promote, publish, and distribute educational materials; conduct educational forums, lectures, and seminars; develop and promote financial aid programs; support individual research projects and individual researchers; promote the transfer of technology from research programs to the private sector; and support individual educators and educational programs. The objectives or goals specified in FERF's Articles of Incorporation include awareness of and support for quality higher education; attainment of higher education by those otherwise unable to attend institutions of higher learning; support for research; promotion and support for "technology transfer"; and development of needed educational programs.

- (16) To accomplish its purposes, objectives, and goals, the Articles of Incorporation empower FERF to, among other things, acquire, hold, transfer, and dispose of real and personal property; obtain and dispose of copyrights, patents, designs, and similar rights; borrow money; invest funds; and solicit funds.
- (17) The members of the Board of Directors of the Florida Education and Research Foundation, Inc., from inception, as indicated in the minutes of the Board of Directors and annual reports filed with the Florida Department of State, are as follows:

Tom B. Adams	1991-1997
Dr. Stan Bates	1993-1997
Margaret Beaumont	1992
Eric Benzing	1992-1993
Sandra E. Billings	1991-1992
Harry Brandon	1995-1997
Jerome G. Carstens	1995
John D'Albora	1995
Gwendolyn DeCort	1993-1995
Eugene C. Johnson	1997 to Present
William A. Johnson	1992-1993
Stephen Megregian	1993 to Present
Peter Morton	1997
Robert Nanni	1995-1997
Brian L. Nemeroff	1995-1996
Jerry Phillips	1996-1997
Dr. Bert Purga	1997 to Present
Dr. Joe Lee Smith	1997 to Present
Dale E. Sugarman	1993-1995
Tom Szuba	1995 to Present
Jodie H. Thompson	1996

- (18) Tom Adams served as President of FERF from inception to April 16, 1997. Peter Morton served as President from April 16, 1997, to June 17, 1997. Stephen Megregian has served as President since June 17, 1997.
- (19) According to the General Counsel to BCC, FERF is now inactive, except for the liquidation of its real estate holdings (see paragraph 121) and the continued support of the bond issue for the development of Foundation Park and support of BCC.

Brevard Teaching and Research Laboratories, Inc.

- (20) The Brevard Teaching and Research Laboratories, Inc. (BTRL), was established as a not-for-profit corporation under the provisions of Chapter 617, Florida Statutes, on April 14, 1992. According to its Articles of Incorporation, the purposes for which BTRL is organized are within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, which includes charitable, scientific, and educational purposes. The specific purpose of BTRL, as set forth in its Articles of Incorporation, is to assist BCC in the operation, maintenance, and management of the Teaching and Research Laboratory Complex at the Florida Advanced

Technology Center of BCC, including those functions which it is difficult for BCC to perform within the established administration of its educational mission. The objectives or goals specified in BTRL's Articles of Incorporation relate to scientific and environmental research; student understanding of the benefits of such research; provision of laboratories for the instruction, teaching, and training of students for employment in such fields, as well as for use by private and public researchers; and to aid in the development of new products.

- (21) To accomplish its purposes, objectives, and goals, the Articles of Incorporation empower BTRL to, among other things, acquire, hold, transfer, and dispose of real and personal property; obtain and dispose of copyrights, patents, designs, and similar rights; borrow money; invest funds; and solicit funds.
- (22) The members of the Board of Directors of the Brevard Teaching and Research Laboratories, Inc., as indicated in the minutes of the Board of Directors and annual reports filed with the Florida Department of State, are as follows:

Dr. Donald Astrab	1992
Sandra E. Billings	1992 - 1994
Dr. Charles Colman	1992 - 1994
John D'Albora	1994 to Present
Dr. Tom Denison	1992
Dr. Michael Helmstetter	1994 to Present
Robert Lawton	1995 to Present
Stephen Megregian	1992 to Present
Dr. Bert Purga	1992 to Present
Bernard Simpkins	1992 - 1994

- (23) Sandra E. Billings served as President from inception to August 26, 1994. Dr. Michael Helmstetter has served as President since August 26, 1994.

Direct-Support Organization Status

- (24) The Florida Education and Research Foundation, Inc., and the Brevard Teaching and Research Laboratories, Inc., were certified by the District Board of Trustees of the Brevard Community College as direct-support organizations of BCC on November 15, 1993, and December 10, 1992, respectively. Section 240.331, Florida Statutes, defines a community college direct-support organization as a not-for-profit corporation incorporated under the provisions of

Chapter 617, Florida Statutes, and approved by the Florida Department of State. A direct-support organization is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, a community college and in the best interest of the State. As direct-support organizations, FERF and BTRL are authorized by the District Board of Trustees of the Brevard Community College to use the property, facilities, and personal services (including full-time or part-time personnel, as well as payroll processing) at BCC.

Other Related Organizations

(25) FERF and/or BTRL have entered into contracts or other business transactions with several other corporate entities with which FERF and BTRL share Board members and/or officers. Following are descriptions of several such entities, some of which are mentioned in the ***FINDINGS AND RECOMMENDATIONS*** section of this report:

- Florida Education and Redevelopment Foundation, Inc. (Foundation), was established as a not-for-profit corporation under the provisions of Chapter 617, Florida Statutes, on September 17, 1996. According to its Articles of Incorporation, the purposes for which the Foundation is organized are within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, which includes charitable, scientific, and educational purposes. The specific purposes, objectives, and goals of the Florida Education and Redevelopment Foundation, as set forth in the Articles of Incorporation, are identical to those of the Florida Education and Research Foundation, Inc. (FERF), as described in paragraph 15. At the time of incorporation, the members of the Board of Directors of the Foundation also served on the Board of Directors of FERF. According to the President of the Foundation, no business has been transacted by the Foundation, other than submission of a proposal to the St. Johns River Water Management District for the construction and lease of a building to be located on land owned by FERF. The Foundation's proposal was originally accepted by the District, but was subsequently withdrawn.
- Indian River Region Environmental Institute, Inc. (IRREI), was established as a not-for-profit corporation under the provisions of Chapter 617, Florida Statutes, on August 10, 1990. According to its Articles of Incorporation, the powers of IRREI are limited to those authorized by Section 501(c)(3) of the Internal Revenue Code and the purposes for which IRREI is organized are to further research and development of

programs and procedures for the protection of the environment and to further a better understanding of the benefits of environmental protection. As described in paragraph 50, IRREI entered into agreements with FERF, BTRL, and BCC to provide various services at prescribed rates of compensation.

- Foundation Park Property Owners Association, Inc. (FPPOA), was established as a not-for-profit corporation under the provisions of Chapter 617, Florida Statutes, on March 31, 1995. According to its Articles of Incorporation, the FPPOA was formed as a wholly-owned subsidiary of FERF to maintain the common areas, environmental areas, and residences of Foundation Park, including design and installation of a master landscaping plan to provide irrigation and stormwater disposition. The FPPOA is authorized to charge fees to the residents of Foundation Park to accomplish these purposes.
- Research Marketing Associates, Inc. (RMA), was established on September 24, 1991, as a for-profit corporation authorized to engage in any activity or business permitted under the laws of the United States and the State of Florida. RMA is authorized to issue and have outstanding at any time 500 shares of common stock with a par value of \$1 per share. RMA entered into agreements with BTRL to provide business support services to BTRL at specified rates of compensation. According to information from FERF's independent auditor, FERF purchased RMA for a subscription price of \$900 and is shown on FERF's audited financial statements as an investment.
- Foundation Park Manufacturing Center #1, a Florida Limited Liability Company (FPMC), was established as a limited liability company under the provisions of Chapter 608, Florida Statutes, on January 15, 1997. The Articles of Organization for FPMC do not indicate the specific purposes for which it was incorporated or the goals and objectives of the organization. As originally organized, the FPMC had two managing members who provided a total of \$1,000 of capital contributions. On September 11, 1997, we were informed by the FPMC Vice-President that FPMC had not transacted any business.

Related Audits

- (26) Our audit did not extend to an examination of the financial statements of the Florida Education and Research Foundation, Inc., and the Brevard Teaching and Research Laboratories, Inc., for the purpose of expressing an opinion thereon. As direct-support organizations of BCC, they are subject, pursuant to Section 240.331(3), Florida Statutes, to annual postaudits by an independent certified public accountant. Such audits through the fiscal year ended June 30, 1996, are available at the offices of BCC. Additionally, an audit of FERF for the nine month period ended March 31, 1997, was conducted and is available at the offices of BCC.

FINDINGS AND RECOMMENDATIONS

- (27) As described in paragraphs 2 and 3 of this report, the scope of this audit included a determination of the extent to which the internal controls of the Florida Education and Research Foundation, Inc. (FERF), and the Brevard Teaching and Research Laboratories, Inc. (BTRL), promoted and encouraged the achievement of management's objectives in the areas of compliance, economic and efficient conduct of operations, reliability of financial records and reports, and safeguarding of assets. In making this determination, our audit disclosed that the internal control environment established for these organizations was not conducive to the accomplishment of these objectives. Most significantly, we noted several conditions which limited the assurance that activities and transactions of the organizations, which have been designated as direct-support organizations of Brevard Community College (BCC), were conducted at arms-length and in the best interests of the organizations, BCC, and the State. These conditions included: actions taken in apparent violation of the Sunshine Law; transactions with entities that shared directors or officers; a lack of competitive procedures for the selection of contractors, consultants, and vendors; inadequate documentation of services provided by consultants; duplicate payments for equipment; receipt of contributions and loans from contractors, consultants, and vendors with whom the organizations conducted business; and a lack of a documented basis for management or Board of Directors approval for certain actions. Each of these conditions, which represent material weaknesses in the internal control environment in which these organizations operated, are discussed under appropriate subheadings of this report.
- (28) **The current President of FERF has provided, in his written response to the findings included in this report, additional information regarding many of the findings. Where appropriate, the additional information provided by the FERF President is addressed in this report. With regard to several of the findings, the FERF President indicated that the College was not in violation of certain Florida Statutes. These findings are included in paragraphs 32 through 36 (*Sunshine Law*), 47 through 53 (*Related-Party Transactions*), 54 through 63 (*Procurement of Goods and Services – General Disbursements*), 77 through 83 (*Motor Vehicles*), and 108 through 111 (*Selection of Underwriters, Construction Manager, and Other Service Providers*). In each of these findings, we have not indicated a violation of the laws cited by the FERF President, but rather have described circumstances in**

which actions of FERF and controls established by FERF were not in accordance with prudent business management practices. For example, while bids for many of the purchases cited in this report are not required by law, prudent business practices suggest that bids, or some other appropriate competitive vendor selection procedure, should be implemented to assure that quality products and services are received at the lowest possible cost to FERF. Where Florida law does not specifically address requirements for particular business practices, it is the responsibility of management to implement procedures to assure that resources are efficiently utilized and adequately safeguarded. We note that the interim BCC President indicated in his written response that BCC would implement procedures to assure that DSO activities are conducted in accordance with prescribed policies and procedures and that appropriate controls are in place to ensure compliance, including open competitive procurement practices.

(29) While Section 240.331(2)(b), Florida Statutes, authorizes a community college to prescribe by rule any condition with which a community college direct-support organization must comply in order to use property, facilities, or personal services at any State community college, the law does not mandate the adoption of rules and/or require oversight by the community college over the activities of a direct-support organization. The BCC has not adopted any rules pursuant to Section 240.331(2)(b), Florida Statutes, and does not appear to have exercised significant oversight over FERF and BTRL. We noted that the President of BCC, on March 13, 1996, issued a memorandum to the direct-support organizations to require them to adhere to certain policies and procedures of BCC. Implementation of such procedures could help to assure the proper conduct of direct-support organization activities; however, they must be supplemented by periodic reviews by BCC of the activities and prompt action to assure that adequate control procedures are actually in effect.

(30) As late as May 23, 1997, in response to our audit report No. 13000, BCC management contended that the activities conducted through FERF and BTRL have been effectively managed and have not constituted a financial drain on BCC. The following is an excerpt from the BCC's May 23, 1997, response:

“In the previous audit report, the Auditor General asked the college to examine the level of support it was providing to Brevard Labs. That was done. However, again in this

audit, the Auditor General is asking that the same question be revisited, and the question as it is now being asked includes a request to again examine BTR Labs, this time relative to whether or not it is within the college's mission, and whether or not it is acting as a financial drain on the college and thereby 'impacting the educational programs provided by the college.'

The College response shall show, in great detail, how it is intricately intertwined with the mission of the college, and that its 'impact' on the other educational programs and financial condition of the college is positive, not negative."

The entire BCC response to audit report No. 13000 is included on pages 37 through 59 of that audit report.

- (31) It is apparent from the existence of these material internal control weaknesses and the findings included in this report that the activities of FERF and BTRL have not been subjected to adequate and effective oversight. The BCC should implement procedures for the review of direct-support organization activities to assure that such activities are in accordance with prescribed rules and/or policies and procedures and that appropriate internal controls are in place to assure such compliance. The Florida Legislature should consider whether to amend Section 240.331, Florida Statutes, to require such oversight of the direct-support organizations by the community colleges.

Sunshine Law

- (32) Section 286.011, Florida Statutes (the Sunshine Law), provides that all meetings of any board or commission of any State agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the State Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings and minutes of the meetings must be promptly recorded and open to public inspection. The Attorney General has opined (Attorney General Opinions Nos. 92-53, 92-80, and 94-32) that the Sunshine Law applies to not-for-profit corporations created for or by a governmental entity for the purpose of assisting the governmental entity. Accordingly, these opinions indicate that direct-support organizations, such as FERF and BTRL, are subject to the requirements of the Sunshine Law.

- (33) Our review of the records of FERF disclosed that on 13 occasions actions of the FERF Board of Directors were taken by unanimous consent of the Board members without holding meetings. Such actions included approval of bond resolutions; authorization of the sale of land; appointment of Board members and acceptance of resignation of Board members; amendment of by-laws to increase Board membership; approval of a bank loan for the purchase of a vehicle; and authorization to enter into contracts. Each instance was documented by a form titled “ACTION WITHOUT MEETING BY UNANIMOUS WRITTEN CONSENT” and signed by members of the Board of Directors. The *Government-in-the-Sunshine Manual*, published annually by the Attorney General, indicates that the Sunshine Law extends to any gathering of two or more Board members to discuss a matter on which foreseeable action will be taken by the Board or to meetings between a Board member and another person acting as a liaison between Board members. Accordingly, the above-described actions appear to have been in violation of the Sunshine Law.
- (34) The Attorney General stated in the *Government-in-the-Sunshine Manual* that for boards subject to the Sunshine Law, reasonable notice of their meetings must be given. Our review of FERF records and discussion with the BCC Vice-President of Business Affairs, who is also the current President of FERF and a Director of BTRL, disclosed that BTRL Board meetings prior to November 1995 and FERF Board meetings prior to April 1996 were not noticed. Subsequent meetings were generally noticed.
- (35) FERF and BTRL should take action to provide that all future meetings be held in strict accordance with the provisions of the Sunshine Law. Additionally, FERF and BTRL should consult with legal counsel to determine what actions, if any, are necessary to address the validity and/or effect of actions taken under circumstances in apparent violation of the Sunshine Law.
- (36) **The current FERF President stated, in his written response to paragraphs 32 through 35, that while the DSO Board meetings are now open to the public and routinely noticed, an opinion from the College counsel shows that the Sunshine Law was not violated because it does not apply to College DSO’s. Our review of the College counsel’s opinion disclosed the counsel did not conclude that the Sunshine Law does not apply to College DSO’s; rather, he indicated that the Attorney General Opinions cited in the findings are**

persuasive but not controlling and that there remains some uncertainty as to the applicability of the Sunshine Law. We note that the interim BCC President indicates in his written response that it is the intent of the College to take action to provide that all future meetings and activities are held in strict accordance with the provisions of the Sunshine Law.

Policies and Procedures

- (37) Our review of the operations of FERF and BTRL disclosed that these entities did not have written policies and procedures for many of their functions, including their accounting and related business functions, for extended periods of time during which many of the actions discussed in this report took place. For example, adequate written policies and procedures were not available to document controls over payroll and personnel expenses, procurement of goods and services, and disbursement activities.
- (38) The President of BCC by memorandum dated March 13, 1996, extended some of the College's policies and procedures to FERF and in May 1996, all FERF employees became BCC employees, subject to all of the BCC policies and procedures; however, most of the activities discussed in this report occurred prior to BCC's extension of its policies and procedures to FERF.
- (39) We were advised by the President of BTRL that BTRL has been subject to the policies and procedures of BCC since January 1, 1994, the date that the BTRL employees became BCC employees. The BTRL President further advised that, previously, only a personnel policies manual approved by the BTRL Board of Directors on April 10, 1993, was in effect. As discussed under appropriate headings in this report, some of the activities discussed in this report occurred prior to the January 1, 1994, implementation of BCC policies and procedures indicated by the BTRL President and others that occurred subsequent to that date did not comply with applicable BCC policies.
- (40) The establishment of adequate policies and procedures should be an element of the oversight for these organizations. Such oversight should include both the adoption of proper policies and procedures and a system for assurance that such policies and procedures have been fully implemented.

Budgetary Controls

- (41) The preparation and adoption of a budget provides a mechanism to plan a level of expenses to meet the objectives and obligations of an organization while remaining within the resources available. Inherent in effective budgetary control is a process to monitor actual expenses as compared to the adopted budget and take action to limit expenditures or revise budgeted amounts, as appropriate. As discussed in the following paragraphs, our review indicated that BTRL had not implemented adequate policies and procedures for the amendment of its budget and use of the budget to control the revenues and expenses of the organization.
- (42) BTRL had implemented a process for the preparation of annual budgets. Also, on January 23, 1995, the District Board of Trustees of BCC adopted a resolution requiring the management of the BTRL in conjunction with the BCC staff, to prepare an annual budget for BTRL in conformity with procedures established for all departments of BCC. Budgets were provided for our review for the 1993-94, 1994-95, 1995-96, and 1996-97 fiscal years; however, no budget amendments were prepared and submitted to the BTRL Board of Directors for any of those fiscal years. Additionally, no comparisons of budgeted revenues and expenses to actual revenues and expenses were submitted to the BTRL Board of Directors. Our comparison of the total budgeted revenues and expenses to actual revenues and expenses as shown in the independent audit reports for the 1993-94, 1994-95, and 1995-96 fiscal years disclosed the following:

<u>Description</u>	<u>Budgeted</u>	<u>Actual</u>	<u>Variance Favorable (Unfavorable)</u>
1993-94			
Total Revenues	\$ 797,000	\$ 579,773	\$ (217,227)
Total Expenses	<u>747,070</u>	<u>910,393</u>	<u>(163,323)</u>
Revenues in Excess of Expenses	<u>\$ 49,930</u>	<u>\$ (330,620)</u>	<u>\$ (380,550)</u>
1994-95			
Total Revenues	\$ 1,885,000	\$ 956,880	\$ (928,120)
Total Expenses	<u>1,885,000</u>	<u>1,111,086</u>	<u>773,914</u>
Revenues in Excess of Expenses	<u>\$ -</u>	<u>\$ (154,206)</u>	<u>\$ (154,206)</u>
1995-96			
Total Revenues	\$ 1,725,000	\$ 1,072,405	\$ (652,595)
Total Expenses	<u>1,330,669</u>	<u>1,290,472</u>	<u>40,197</u>
Revenues in Excess of Expenses	<u>\$ 394,331</u>	<u>\$ (218,067)</u>	<u>\$ (612,398)</u>

(43) The audited actual revenue and expense amounts for the 1996-97 fiscal year were not available. A comparison of budgeted revenues and expenses to actual revenues and expenses as shown on provisional (unaudited) financial statements prepared by BTRL disclosed the following:

<u>Description</u>	<u>Budgeted</u>	<u>Actual</u>	Variance Favorable (Unfavorable)
Total Revenues	\$ 2,060,000	\$ 1,030,238	\$ (1,029,762)
Total Expenses	<u>1,931,000</u>	<u>1,707,875</u>	<u>223,125</u>
Revenues in Excess of Expenses	<u>\$ 129,000</u>	<u>\$ (677,637)</u>	<u>\$ (806,637)</u>

(44) As indicated above, total budgeted expenses exceeded the total actual reported expenses for the 1994-95 and 1995-96 fiscal year; however, for the 1993-94 fiscal year, total actual expenses (\$910,393) exceeded total budgeted expenses (\$747,070) by \$163,323. As also indicated in the above tabulation, total budgeted revenues substantially exceed total actual revenues for each fiscal year. Because budgeted revenues are a major factor in the estimation of resources that will be available for use in the ensuing fiscal year, overly optimistic estimates of revenues in comparison to actual revenues can and have resulted in shortfalls in available resources. Additionally, the budgets did not include the effects of prior year deficit fund balances. Failure to consider necessary changes in revenue estimates and prior year deficits may have contributed to the deficits reported by the BTRL and the resulting need for funding by the BCC as discussed in paragraphs 13 and 115.

(45) In the absence of timely amendments to adopted budgets and adherence thereto, the effectiveness of the budget as a financial planning tool is diminished. To ensure that expenses of BTRL are properly monitored for changing conditions and kept within authorized amounts and available resources, we recommend that BTRL, in conjunction with BCC, develop and implement procedures to assure that budgets are properly prepared and amended, both as to revenues and expenses, and that periodic comparisons are made and submitted to the BTRL Board of Directors. Additionally, procedures should be implemented to assure that reasonable revenue estimates are determined and included in the budgets.

(46) We are unaware of any specific requirement that the Florida Education and Research Foundation, Inc. (FERF), adopt budgets for its activities and no budgets were made available for our review. In view of the limited activities of FERG at the present time (see paragraph

19), it may not be necessary for FERF to adopt a budget; however, should the activities of FERF increase in the future, FERF should, in conjunction with BCC, develop and implement procedures to assure that budgets are properly prepared and amended and that periodic comparisons are made and submitted to the FERF Board of Directors.

Related-Party Transactions

- (47) Our audit disclosed numerous contractual relationships and transactions among FERF, BTRL, BCC, and other organizations which shared Board members, officers, or employees with these organizations. These relationships and the sharing of Board members may have resulted in transactions involving FERF and BTRL that were not made at arm's length and in the best interests of BCC and the State. Details of the relationships and transactions are described in the following paragraphs.
- (48) Chapter 112, Florida Statutes, contains a code of ethics for public officers and employees in the State of Florida. In enacting the code of ethics, the Florida Legislature stated in Section 112.311(1), Florida Statutes, "It is essential to the proper conduct of business that public officials be independent and impartial and that public office not be used for private gain other than remuneration provided by law. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist." The Legislature further stated, in Section 112.311(4), Florida Statutes, that, "It is the intent of this act to implement these objectives of protecting the integrity of government and of facilitating the recruitment of qualified personnel by prescribing restrictions against conflicts of interest without creating unnecessary barriers to public service." The code of ethics includes restrictions on activities such as doing business with one's agency, unauthorized compensation, and conflicting employment or contractual relationships.
- (49) We recognize that the provisions contained in the code of ethics may not apply to officers and employees of not-for-profit or for-profit corporations; however, they do apply to officers and employees of BCC. As direct-support organizations of BCC, FERF and BTRL are required by Section 240.331, Florida Statutes, to be organized and operated exclusively to receive, hold, invest, and administer property on behalf of BCC and to operate in a manner consistent with the goals of BCC and in the best interest of the State. We believe that this relationship between the direct-support organizations and BCC places the operations of the direct-support

organizations within the realm of public interest and mandates that such operations be conducted in an ethical and prudent manner.

(50) A summary of the transactions and the relationships among the parties to the transactions is presented as Exhibit A and in the following paragraphs.

- The former President of FERF, who held that position from September 13, 1991, through April 16, 1997, also held the following positions with other organizations with which FERF had business relationships:

<u>Organization</u>	<u>Position</u>	<u>From</u>	<u>To</u>
BCC	Special Assistant to President	7/1/94	3/31/97
IRREI	Director/President	8/10/90 (1)	Present
RMA	Director/President	10/31/91 (1)	2/25/93 (1)

(1) Date of notification to Secretary of State of change in officers.

As indicated in paragraph 11, FERF was created for the purposes of enhancing the development of Foundation Park at BCC's Palm Bay Campus. The former FERF President's responsibility as Special Assistant to the President of BCC was to oversee the development of Foundation Park. As described in paragraphs 13, 88, and 89, FERF obtained financing for the Foundation Park land and facilities. Thus the former President of FERF was in a position to exercise considerable influence over the development of Foundation Park. Our review of the business relationships related to these organizations disclosed the following:

- On July 1, 1992, prior to the former FERF (and IRREI) President's employment with BCC, BCC and IRREI entered into an agreement that provided for IRREI to provide specified business services in support of the BTRL. The contract stated that fees for these services would be covered by short term contracts with the initial contract to cover costs incurred by IRREI in the amount of \$10,000. Similar arrangements continued through the 1993-94 fiscal year and IRREI was paid at least \$24,820 for services provided during that period. BTRL entered into similar agreements with IRREI and paid at least \$116,120 to IRREI during the period from January 1993 to July 1994, pursuant to those agreements. Beginning in the 1991-92 fiscal year, IRREI began purchasing equipment for BTRL on behalf of the

BCC (see paragraph 64). During the 1991-92 through 1994-95 fiscal years, BCC paid an additional \$515,448.72 to IRREI, primarily for equipment purchases and salaries. On October 22, 1992, the IRREI Board of Directors resolved to compensate the President of IRREI (who was also President of FERF at the time) at \$50,000 per year for services previously rendered in “fiscal years 1990 and 1991 without receiving any compensation.” Our audit did not include the transactions of IRREI or a determination as to the extent, if any, of payments made pursuant to the resolution.

- IRREI entered into a contract with FERF on February 17, 1995, providing for IRREI to provide certain services for an unspecified time period to FERF including planning, consulting, public relations, governmental relations involving seeking grants from State and Federal sources, accounting and legal, and any other requested services. The former President of FERF was also President of IRREI at the time that this contract was entered into and was the only signer of the agreement for both organizations. FERF agreed to pay IRREI for such services, with the exact amount of such payments to be decided upon by FERF and IRREI after taking into account the complexity of the services to be provided, the reasonable rate for comparable services, the value of the services to FERF, and the expense and cost of providing the services. Payments to IRREI by FERF, primarily for services billed by IRREI, totaled \$157,789 during the period from August 1994 through November 1996.
- Research Marketing Associates, Inc. (RMA), also entered into three agreements with BTRL during the period from October 1992 through October 1993 to provide business support services, including marketing, public relations, and educational funding specialists’ services, to BTRL, which agreed to pay \$35 to \$45 per hour for such services. As indicated above, IRREI had also entered into an agreement with BTRL to provide similar services. The President of IRREI, who was also the former President of FERF, was also President of RMA. Payments to RMA during the period from December 1992 through March 1994 totaled at least \$115,793. As noted in paragraph 25, RMA was organized as a for-profit corporation but was subsequently acquired by FERF. The minutes of FERF did not disclose the basis

for this acquisition, indicate any actions taken to determine the value of any assets acquired, or how this acquisition was intended to benefit FERF or BCC.

- The BCC Vice-President for Business Affairs has served as a Director of FERF since August 30, 1993, and a Director of BTRL since December 8, 1992. The Vice-President for Business Affairs is responsible for the business operations of BCC, including budget development, financial planning, reporting, and purchasing. On July 1, 1993, the Vice-President signed, on behalf of BCC, an agreement between BCC and BTRL that provided for BCC to pay \$40,000 per month to BTRL for specified services. While the contract amount was included in the approved budget, the specific terms of the agreement had not been approved, of record, by the BCC District Board of Trustees. As specified in the bond indenture for the bonds issued on behalf of FERF (see paragraph 104), the Vice-President was responsible for approving all draws made on the construction fund for the construction of the Brevard Teaching and Research Laboratories facility.
- As shown on Exhibit A, several individuals who served as directors and officers of the corporations involved in the development of Foundation Park served on more than one corporation Board of Directors. For example, an individual who served as a director of both FERF and BTRL also served as a director of IRREI and RMA. Two other individuals who served as directors of FERF also served as directors of both IRREI and RMA. As indicated above, both FERF and BTRL contracted with IRREI for services and RMA contracted with BTRL to provide services. As discussed more fully in paragraph 69, in one instance BTRL contracted with a FERF director to provide consulting services at a cost of \$10,000.

(51) The participation of the former President of FERF and the BCC Vice-President for Business Affairs in the above relationships and the shared memberships on the Boards of Directors of the corporations give rise to concerns that the transactions involving these corporations may not have been at arm's length and in the best interests of BCC and the State. These transactions are of even greater concern when considered together with the lack of documentation of competitive vendor selection procedures in the selection of the corporations to provide services and the lack of documentation for the services actually provided (see paragraphs 56 through 63 and 108 through 111). Further, given the nature of these

related-party activities and the lack of documentation of actions taken and transactions conducted, there is the potential that results of a review of the activities by the Internal Revenue Service could jeopardize the not-for-profit status of these organizations, or the tax exempt status of debt issues, under the United States Internal Revenue Code and Florida Statutes.

- (52) Section 240.331(2)(c), Florida Statutes, authorizes the Board of Trustees of BCC to prescribe conditions with which direct-support organizations must comply in order to use college property, facilities, or personal services. We recommend that the officers and directors of FERF and BTRL consult with BCC officials regarding the implementation of restrictions on the activities of the direct-support organizations which will assure the ethical conduct of business by those organizations. For example, the restrictions imposed by the code of ethics in Chapter 112, Florida Statutes, should be considered in developing a code of ethics for FERF and BTRL.
- (53) **The current FERF President stated, in his written response to paragraphs 47 through 52, that no conflicts of interest under Chapter 112, Florida Statutes, or any other Florida law occurred as a result of the relationships described in the finding. The point of the finding is that the relationships among the various organizations, together with a lack of competitive vendor selection procedures and inadequate documentation of the receipt of goods and services, create an environment in which transactions among the organizations may not be at arm's length and in the best interests of the organizations, BCC, and the State. Although the law does not require a direct-support organization to comply with Chapter 112, Florida Statutes, the interim BCC President, in his written response with which we concur, indicates that it is the intent of the College to adopt such policies.**

Procurement of Goods and Services

- (54) FERF and BTRL have been assigned specific responsibilities by their Articles of Incorporation and, as direct-support organizations of BCC, by Section 240.331, Florida Statutes. They are authorized by Section 617.0302(15), Florida Statutes, to exercise all powers necessary or convenient to effect the purposes for which they were organized. The Articles of Incorporation provide that all private funds received shall be expended as directed by the donor and all public funds received from the State of Florida be managed and expended subject to the applicable

laws of the State of Florida and the rules and regulations of the supervising State agency. The Articles of Incorporation do not specifically address certain other sources of funds, such as fees for the use of facilities and bond proceeds; however, we believe that such funds accruing to a direct-support organization are in the nature of public funds and should be expended subject to the controls normally associated with public funds. Further, the fiduciary responsibility associated with such funds mandates that the benefits derived by FERF, BTRL, BCC, and the State of Florida be demonstrated in the records of the organizations.

- (55) To provide documented assurance that FERF and BTRL expenditures are for authorized purposes and in accordance with applicable requirements, FERF and BTRL are responsible for establishing and maintaining internal controls including the establishment of procurement practices that assure that transactions are made at arm's length and in the best interests of FERF, BTRL, BCC, and the State of Florida.

General Disbursements

- (56) Regarding the expenditure of public moneys, FERF and BTRL must, as a matter of record, demonstrate that expenditures were: (1) authorized by the Articles of Incorporation or applicable law; (2) reasonable and necessary in the circumstances; and (3) in pursuit of a public rather than a private purpose. The documentation of an expenditure in sufficient detail to establish the authorized purpose served, and how that particular expenditure serves to further the identified public purpose, should be present at that point in time when the voucher is presented to the official empowered to make the payment of funds requested from the public treasury. Unless such documentation is present, the request for payment should be denied. In addressing this principle, the Attorney General has stated, in part, in Opinion No. 068-12, dated January 25, 1968, that:

“Vouchers for payment of public funds, whether state, district, or county, submitted or to be submitted to the paying agency should contain sufficient information for the paying agency, or its preauditors or officials and the postauditors to determine whether the requested payment is authorized by law. Doubtless, in many instance the purposes for which payment is requested will appear, without explanation, from the face of the voucher; however, in many other instances the legality of the payment requested will not appear from the face of the voucher. In those instances where the legality of the requested payment is not readily apparent to the paying agency the paying agency is justified in turning down the request for payment or requesting clarification. The person issuing the voucher for payment is obligated to cast such vouchers in such language as will indicate to the postauditor or the public the legality of such payments.”

- (57) The nature of our audit required that we form judgments concerning the propriety of FERF and BTRL expenditures. Our audit included an examination of the policies, procedures, and records inherent in their accounting systems, insofar as they pertain to the expenditures of these organizations. Our audit of FERF and BTRL disclosed numerous expenditures for which available records did not afford a reasonable basis as to their propriety and the public purpose served. These expenditures are discussed below and under other appropriate subheadings in this report.
- (58) **The current FERF President indicated, in his written response to the findings in this section of the report, that because of the small size of FERF, different standards of business management and accountability should be applied than would normally be associated with larger organizations. While FERF had few employees, it must be noted that FERF was responsible for the administration of bond proceeds totaling \$9.5 million, as well as the acquisition of land for the development of Foundation Park. While the methods of accomplishing accountability for operations may vary to some extent depending on the size of an organization, considering the dollar magnitude of these transactions, it is imperative that the basic concepts of accountability, efficient use of resources, and safeguarding of resources be strictly adhered to by FERF. The need to demonstrate that these objectives are accomplished exists without regard to the size of the organization.**
- (59) Our audit disclosed numerous expenditures by FERF and BTRL for which the authorized public purpose contemplated to be served by the expenditures had not been demonstrated in the records or which were not adequately documented as to the application of necessary controls designed to assure that the goods and services were actually received and were acquired at the lowest cost commensurate with quality considerations. The specific types of deficiencies in the supporting documentation for such expenditures, which are in addition to the duplicate payments described in paragraphs 64 through 70 and the payments from the bond proceeds described in paragraphs 98 through 111, are as follows:
- The need for services provided by contractors was not always demonstrated in the records of FERF or BTRL. For example, the business management services provided to FERF and BTRL by IRREI and RMA, as described in paragraph 50, were not

documented as to the necessity for obtaining such services. In a memorandum dated October 22, 1997, the current President of BTRL and the current Business Manager of BTRL stated: “The consulting contracts with FERF, Indian River Region Environmental Institute, and Research Marketing were initiated prior to our arrival at BTR Labs. We have not found these types of agreements necessary, however, we were not involved in the development of the original goals and objectives of BTR Labs and therefore can not comment upon the value of these contracts toward the pursuit of those goals.”

In response to our request for documentation of the services or benefits received by FERF for the payments to IRREI, the BCC Vice-President for Business Affairs, who is also the current President of FERF, stated in a memorandum dated October 2, 1997, “Reconstructing ‘services received’ after the fact is not possible. However, FERF examined each invoice prior to paying that invoice, therefore, if there was any dissatisfaction, it would have been resolved at the time.” The FERF President’s response illustrates the need to obtain documentation of benefits received at the time that the payments were made and to retain such documentation in the records of the organization.

- Contracts for services, including various business management services and auditing services, were generally not subjected to bids or other competitive selection procedures to assure that the services are obtained at the lowest possible cost commensurate with quality considerations and that the contracts were entered into on an arm’s length basis without favoritism in the selection of the contractors.
- Adequate vendor invoices identifying the specific goods or services received were not always available for our examination. In particular, payments made pursuant to contracts were often not adequately supported by documentation demonstrating the specific services provided for the payments or did not provide an adequate basis for determining the amount that should have been paid under the terms of the contracts. For example, in many cases the invoices indicated the numbers of hours billed, but did not indicate the identities of the individuals performing the services, the dates and times that the services were provided, and the specific services provided. Adequate vendor

invoices identifying the goods or services purchased are necessary to establish that the payments were made for authorized purposes of the payors.

- Supporting documentation for several FERF payments identified goods or services which did not appear to serve an authorized purpose of FERF or BCC. Examples of such payments included scholarships for students to attend a private university (\$4,500), a loan to IRREI (\$2,500), and a reimbursement to the former FERF President for repair of an unidentified vehicle (\$523.31). As discussed in paragraph 24, FERF, as a direct-support organization of BCC, has been established to support BCC activities and all expenditures should be identifiable to the benefit of the BCC and the State of Florida.

The current FERF President stated, in his written response to this finding, the following:

- 1. With regard to the soccer scholarships (\$4,500), the FERF President stated that FERF's charter includes scholarships and that the money to fund the scholarships was donated to FERF for that specific purpose. The FERF President did not address the provision of scholarships by a BCC DSO to students attending another institution. As indicated, FERF was designated a BCC DSO and, as such, must conduct activities for the benefit of BCC.**
 - 2. With regard to the automobile repair costs (\$474.93), the FERF President has provided additional information which could not be located at the time of our audit fieldwork. This information, which appears to indicate that the payment was for repairs to the FERF-owned vehicle, should be made a part of FERF's documentation for the disbursement so that it can be made readily available to anyone reviewing the transaction.**
- In some instances, payments were based on rates that differed from those established in the terms of the contracts. For example, BTRL paid IRREI for services at a rate of \$50 per hour during the period from September 1993 through August 1994, for services provided through April 1994, while the contract provided for payment at \$45 per hour, resulting in an overpayment of approximately \$3,500, based on the contract rate.

- Supporting documentation was generally not effectively cancelled for FERF payments. Cancellation of supporting documentation, primarily original invoices, is necessary to prevent the reuse of the invoices to make duplicate payments. Failure to properly cancel all original invoices upon payment could result in duplicate payments similar to those discussed in paragraphs 64 through 70.
- Signed documentation evidencing the receipt of goods and services was generally not available for our examination for FERF payments. Documentation signed by appropriate management personnel evidencing management authorization for purchases and receipt of the goods and services is necessary to document that the payments were made only on the basis of authorized goods and services actually received.

(60) **The current FERF President stated, in his written response to this finding, that the canceling of invoices is no longer a good control to rely on since, with the advent of high-speed laser printers, original invoices can be rapidly produced and duplicated. The FERF President does note, however, that BCC continues to apply this control. The canceling of invoices, like many internal control procedures, can be defeated by an elaborate attempt to circumvent it but can be effective in minimizing the risk of less sophisticated attempts or accidental resubmission of invoices for payment.**

(61) In the absence of supporting documentation to demonstrate the legal authority, public purpose, and demonstrable benefit provided to BCC and the State of Florida by each of the expenditures referred to above, the FERF and BTRL Boards of Directors could not be assured as to their propriety. We recommend that the Boards require documentation as to the propriety of all expenditures to be maintained in the records of the organizations.

(62) We noted one payment to IRREI and two payments to FERF for the purpose of making payments to third parties but for which we were not provided documentation to show that IRREI or FERF made the payments to the third parties, as follows:

- On August 17, 1993, BCC paid \$37,600 to IRREI for payment of an invoice dated May 17, 1993, from Bruker Instruments, Inc. (Bruker), for laboratory equipment. According to a letter dated August 21, 1997, from the Office Manager of Bruker, payment was never received by Bruker for this invoice. The Office Manager further stated, “Each

facility (Indian River and Brevard) claims the other entity owes the money. In November 1996 I was told by Tom Adams that these invoices had to be addressed to Brevard Teaching and Research for these invoices to be processed for payment.” Our review of BTRL and IRREI records made available to us did not disclose a payment to Bruker related to this invoice. The President of IRREI acknowledged to us on September 11, 1997, that no payment was made by IRREI for this invoice and the moneys provided by BCC were used for IRREI operating expenses.

- FERF received \$7,461 from the bond trustee on construction draw No. 17. This payment was based on an invoice from Contrax Furnishings, a Division of JR Office Furniture Co., Inc., in the amount of \$10,608. The invoice included with the construction draw documents included as a description, “Per the attached”; however, there was no attachment identifying the items covered by the invoice. A notation on the request for payment by FERF, identifying that invoice as the basis for the payment, indicated that FERF was being paid the balance in the construction fund (\$7,461). We were not provided with documentation showing that FERF actually made a payment to Contrax Furnishings related to the invoice. We did note, however, that according to the BCC Vice-President for Business Affairs, the furniture was subsequently paid for by BCC from BCC’s PECO funds.
- On June 23, 1995, FERF entered into an agreement with BTRL, whereby BTRL would pay a project/property management fee to FERF in the amount of \$15,000 the first year and increased by 3 percent each subsequent year. The agreement did not identify the specific services to be provided by FERF but did assign the rights to the management fee to Atlantic Gulf Communities Corporation (AGC) for payment on a \$44,000 promissory note from AGC to FERF. FERF was paid the \$15,000 management fee from bond funds on construction draws No. 8 and 11 (see Exhibit C). The BCC Vice-President for Business Affairs informed us that he could find no payments made to AGC on the \$44,000 promissory note and that the note was subsequently combined with another note.

(63) We recommend that BCC or BTRL, as appropriate, determine whether any moneys are owed to BTRL or BCC as a result of the above transactions and seek recovery, as appropriate. Determinations should also be made as to whether any moneys are owed to Bruker and AGC.

Our audit report will be filed with the Office of the State Attorney, Eighteenth Judicial Circuit, for a determination as to whether any criminal violations of law occurred in connection with these transactions.

Duplicate Payments

- (64) The Brevard Community College (BCC) entered into agreements with the Indian River Region Environmental Institute, Inc. (IRREI), on June 10, 1991, and July 1, 1992, for assistance with the management and operation of the laboratories maintained by BTRL. In audit report No. 12356, dated June 23, 1994, we noted that approximately \$500,000 of equipment was purchased for use by BTRL, either through BTRL or the outside consulting firm (IRREI) during the 1992-93 fiscal year rather than by BCC's Purchasing Department. This process began during the 1991-92 fiscal year and continued during the 1993-94 fiscal year. The title to all of the equipment purchased by IRREI for use by BTRL has been vested with BCC.
- (65) In audit report No. 12356, paragraphs 36 through 44, we noted that effective controls were not exercised over the equipment purchases made under the arrangements among BCC, BTRL, and IRREI. Specifically we noted: (1) the contract between BCC and BTRL had not been approved by the BCC's Board of Trustees and the contract was general in nature and did not specify the manner in which services would be provided; (2) there was nothing of record authorizing any delegation of purchasing authority to BTRL or IRREI or specifying the procedures to be followed by those organizations; (3) there was no indication that any of the items were purchased pursuant to bids or combined for bid purposes; and (4) the purchases were not adequately supported by BCC purchase orders, receiving reports, and invoices. The President of BCC, in his written response dated June 6, 1994, to the findings in that report, stated, "As much as practical, the College has corrected the records associated with the purchasing of the equipment to furnish the Brevard Teaching and Research Labs. All original invoices which could be located have been located. The College understands that without invoices, errors and double payments could occur. Fortunately, that did not happen. The College discontinued this practice, and now all transactions go through normal college systems."
- (66) Notwithstanding the President's response to the findings in audit report No. 12356, our audit of BTRL disclosed that \$66,258.16 of purchases billed to BCC by IRREI and paid by BCC during the period from January 1992 to December 1992 were also billed to BCC by BTRL and

paid by BCC during the period from July 1992 to February 1993. A listing of the duplicate payments is shown in Exhibit B. Documentation provided to us by BTRL (and stated to be records of IRREI) supporting the billings to BCC for the purchases included a comparison of billings by both organizations with a clear indication of the duplicate billings. The Vice-President for Business Affairs for BCC generally initialed the billings from BTRL. An individual employed as an accountant by IRREI, who was responsible for preparing the billings to BCC and for the equipment purchased by IRREI, was also responsible for maintaining the accounts and records of BTRL. While the payment vouchers for the payments made to IRREI included documentation in the form of invoices, the payment vouchers for the payments to BTRL did not include such documentation.

(67) **The current FERF President stated, in his written response to this finding, that pursuant to the recommendations in audit report No. 12356, BCC reviewed all payments made to BTRL but failed to uncover the duplicate payments problem. As indicated above, audit report No. 12356 disclosed internal control deficiencies relating to the equipment payments and indicated that the making of payments to IRREI and then at a later date to BTRL raised the possibility of duplicate payments. Therefore we believe the College should not limit its review, for the purpose of identifying duplicate payments, solely to the payments to BTRL. Stronger internal control procedures may have disclosed the duplicate payments before they occurred.**

(68) On November 17, 1997, the BCC Vice-President for Business Affairs filed a claim with the Florida Community College Risk Management Consortium indicating that “Brevard Community College has been hit with a series of duplicate payments which resulted in the college losing \$66,953.33.” The Vice-President stated in the claim letter, “Based on the worksheet which is attached, it appears that this was not an accident.” The BCC President notified the Office of the State Attorney, Eighteenth Judicial Circuit, of the duplicate payments by a letter dated December 12, 1997, and requested a determination as to whether any criminal wrongdoing had occurred. A copy of our audit report will be filed with the Office of the State Attorney, Eighteenth Judicial Circuit, for a determination as to whether any criminal violations of law occurred in connection with such payments.

(69) Our review disclosed additional instances of duplicate payments as follows:

- BTRL was reimbursed by both BCC and the bond trustee for services provided by a consultant (who was a FERF Director) in connection with the Brevard Laboratories facilities. During the period from May 1992 through March 1994, the consultant was paid \$10,000 by BTRL for services rendered. Each payment was subsequently reimbursed to BTRL by BCC. Additionally, the same consultant invoices were submitted to the bond trustee on January 4, 1995, and the amount of \$10,000 was again reimbursed to BTRL, this time from bond funds on construction draw No. 4 (see Exhibit C). In response to our inquiry regarding these payments, we were informed by the BCC Vice-President for Business Affairs that payments for the laboratories project were "... made from various college, BTR, or grant accounts. Then, when the bonds were actually sold, those invoices were eligible for payment from the bond funds because the services directly supported the design of the building. Therefore, the trustee was billed and the trustee paid those invoices. Since the original fund source was from college grants and matching accounts, the funds were left with BTR to use as operating capital." Eligibility of the payments for reimbursement from bond funds and the authority of BCC to provide funding to BTRL are discussed in paragraphs 95, and 102 through 107.
- The architect for the Brevard Laboratories facility, Barnett, Fronczak, Neubauer, was paid \$18,787.28 on construction draw No. 3, dated December 6, 1994, for basic services related to the project. An attachment to the invoice indicated, "This figure includes \$16,650 which had previously been billed direct by Outlaw and Rice Engineers, but which was included in Barnett Fronczak's contract and therefore is to be remitted by the architects to the engineers." Outlaw and Rice Engineers, Inc., had been previously paid \$33,358 on construction draw No. 1, dated October 6, 1994. According to a letter dated November 19, 1997, to Outlaw and Rice Engineers, Inc., from the BCC Vice-President for Business Affairs, it was agreed that the duplicate payment amount would be maintained as a credit and used to offset future FERF billings.

On December 1, 1997, Outlaw and Rice, Engineers, Inc., in a letter to the BCC Vice-President for Business Affairs, identified three invoices from 1995 which were used to offset the credit. However, our review of these invoices disclosed that two of the invoices, which totaled \$10,950 and were for "Redesign and permitting of 'G Tracts' East of San Filippo," were unrelated to the bond project. The third invoice (\$5,300), which was for "Redesign of portions of the storm water system to accommodate the

widening & improvements to Foundation Park Blvd,” was not clearly related to the bond project. We recommend that FERF restore the amount of the overpayment to the bond construction account.

- (70) **The current FERF President, in his written response to this finding, presented additional explanations provided by Outlaw and Rice Engineers, Inc., for the work for which the credit balance was used. We have reviewed these additional explanations and remain of the opinion that the work described was either unrelated to the bond project or not clearly related to the bond project. We note that the interim BCC President indicates, in his written response, that BCC would review all transactions relative to the bond issuance and facility construction to determine whether any moneys are owed to BTRL, BCC, and/or the Bond Trustee and seek recovery, as appropriate.**

High Efficiency Chiller Purchase

- (71) A BCC internal audit report dated June 30, 1997, questioned the purchase of a high efficiency chiller for the BTRL clean room facility using Florida Department of Community Affairs’ grant funds. The internal audit report stated: “This review indicated substitute equipment not meeting contract requirements was intentionally delivered to the Clean Room job site on September 30, 1996 when the ordered equipment had been delayed. \$125,000 was then paid on the basis of a receiving document indicating that the ordered equipment had been delivered on September 30, 1996 when it was actually not received until October 22, 1996. The contract specified mandatory last delivery date was September 30, 1996.” The internal audit report further stated that in a meeting held with officers of the contractor on June 25, 1997, the Internal Auditor requested an explanation for the delivery of the substitute equipment. The report noted that the contractor’s Chairman of the Board/Chief Executive Officer stated that the contractor had been notified by the supplier of the equipment that the delivery date could not be met and that the FERF President told him that something must be delivered or they would lose the contract funds.
- (72) The information provided in the internal audit report indicated that actions were taken to represent falsely that grant terms had been met. We recommend that the internal audit report regarding the high efficiency chiller acquisition be provided to the State Attorney, Eighteenth

Judicial Circuit, for a determination as to whether any criminal violations of law occurred with regard to the acquisition of the high efficiency chiller.

- (73) **The current FERF President stated, in his written response to paragraphs 71 and 72, in reference to the chiller that he had received “a statement from the staff member who signed for the delivery that the sides of the shipping container were slatted and he could see that it was some kind of piece of big A/C equipment.” We continue to believe that some responsible official should have determined that the precise equipment ordered was received prior to requesting payment of \$125,000.**

Contributions from Vendors and Consultants

- (74) Our audit disclosed that numerous contributions and loans were received by FERF from consultants and vendors doing business with FERF or BTRL. The loans and contributions were made directly to FERF by the consultants and vendors and recorded in the accounting records of FERF. Following is a list of consultants and vendors who made loans or donations to FERF and were doing business with FERF or BTRL:

- **Foundation Park Property Owners Association, Inc. (FPPOA)**

FPPOA is a not-for-profit corporation organized to maintain the grounds in certain areas of Foundation Park and to assess fees to residents of Foundation Park for such service (see paragraph 25). FPPOA was paid \$20,000 from the bond proceeds on June 6, 1995, for maintenance of areas adjacent to the bond lands and made a \$10,000 contribution to FERF on February 23, 1996. The former President of FERF also served as President of FPPOA.

- **Indian River Region Environmental Institute (IRREI)**

IRREI, a not-for-profit corporation organized to further research and development and environmental protection (see paragraph 25), has entered into several contracts with FERF, TRDA, and BCC to provide various business management and other services (see paragraph 50). IRREI contributed \$7,300 to FERF. The former President of FERF was also President of IRREI.

- **Prager, McCarthy and Sealy, Investment Bankers**

Prager, McCarthy and Sealy, Investment Bankers, was selected as the underwriter for the bonds which were issued on October 1, 1994, and refunded on April 1, 1995, (see paragraphs 88 and 89) and received \$1,272,282.09 from the bond issue proceeds and investment earnings. Prager, McCarthy and Sealy contributed \$17,000 to FERF on June 9, 1995.

- **Ringhaver**

Ringhaver is a vendor from which a diesel generator was purchased on construction draw No. 12, dated August 31, 1995, for \$74,650. Ringhaver contributed \$15,000 to FERF on December 18, 1995.

- **Robert A. Conner, Inc.**

Robert A. Conner, Inc., received a \$204,554.49 subcontract for site work on the bond project and was paid \$5,200 by FPPOA on June 13, 1995, for grounds clearing services. Robert A. Conner, Inc., made four contributions totaling \$15,000 to FERF during the period from May 27, 1994, through March 13, 1996.

- **Tom Adams**

Tom Adams served as President of FERF and also as President of IRREI which received a contract from FERF to provide consulting services to FERF (see paragraph 50). Tom Adams made several donations totaling \$11,643.70 to FERF.

- **Mad Dog Design and Construction Company, Inc.**

Mad Dog Design and Construction Company, Inc., is the construction firm that contracted for construction of the Brevard Laboratories building on July 7, 1994, and was paid \$2,347,104.15 through June 30, 1997. Mad Dog Design and Construction Company, Inc., loaned \$5,000 to FERF on September 14, 1994. As of November 28, 1997, this loan had not been repaid.

- **Research Marketing Associates, Inc. (RMA)**

RMA is a consulting firm that contracted with BTRL to provide various business consulting services (see paragraph 50). RMA loaned \$400 to FERF on March 31, 1994.

(75) The receipt of contributions and loans from consultants and vendors doing business with an organization or a related organization raises a question regarding the propriety of the transactions between the organization and the consultants and vendors. While it is generally not possible on postaudit to determine the existence of any relationship between the business transactions and the loans or contributions, such contributions and loans, together with the cited lack of competitive vendor or consultant selection procedures and lack of adequate documentation of goods or services provided, could indicate a circumvention of the controls normally associated with the conduct of business by arm's length transactions between independent parties. A copy of our report will be provided to the Office of the State Attorney, Eighteenth Judicial Circuit, for consideration as to whether an investigation of loans and contributions such as those described above is warranted.

(76) **The current FERF President, in his written response to paragraphs 74 and 75, provided additional information regarding the character and circumstances of several of the contributions, but did not provide documentation to support the information or explanations as to how this information would alleviate the concern raised in the finding.**

Motor Vehicles

(77) Our review disclosed that FERF obtained at its cost a vehicle that was used by the former President of FERF. As discussed below, there was nothing of record to indicate that FERF considered and documented the basis for determining: (1) the need to acquire the vehicle; (2) the type of vehicle that would best serve FERF's needs as compared to the costs; and (3) the manner of acquiring the vehicle at the least cost to FERF. We also noted that the vehicle subsequently was sold to the former President of FERF without consideration of whether the vehicle could have been sold at a higher price by open bid or other competitive procedure. Details of the transactions relating to the vehicle are discussed in the following paragraphs.

(78) In October 1994, FERF leased a 1994 4-wheel drive Ford Explorer. On January 16, 1995, the FERF Board of Directors requested two Board members to determine whether it would be

more economical to purchase the vehicle rather than lease it. On the recommendation of the Board members, FERF converted the lease to a purchase in the amount of \$23,723.89 on June 6, 1995. FERF made a down payment of \$3,973.89 on June 6, 1995, and obtained a loan in the amount of \$19,750 at 10.5 percent, with monthly payments of \$424.50, to finance the purchase.

- (79) On September 11, 1995, three months after the purchase of the 1994 vehicle, FERF traded that vehicle for a 1996 4-wheel drive Ford Explorer XLT. FERF received a trade-in allowance of \$17,000 on the 1994 vehicle which, with a then existing loan payoff balance of \$19,072.16, resulted in a loss of \$2,072.16 on the trade-in. The total cost of the 1996 vehicle, including the loss on the trade-in, was \$31,094.66. FERF obtained a bank loan in the amount of \$30,105.70 at 10.5 percent and monthly payments of \$648.54 to pay for the vehicle. On August 22, 1996, FERF paid off the 1996 vehicle loan balance of \$26,285.25 with moneys borrowed from the Brevard Community College Foundation, Inc. (BCC Foundation).
- (80) The 1996 vehicle was transferred from FERF to the BCC Foundation in return for a reduction by \$26,585.00 of the previous loan from the BCC Foundation to FERF; however, title to the vehicle was not transferred. In a letter dated March 27, 1997, to the BCC Foundation, the former President of FERF requested that he be allowed continued use of the vehicle for \$100 per month for six months. The letter further stated that after six months the former President of FERF would be willing to purchase the vehicle at “fair market price.” FERF obtained two appraisals on the 1996 vehicle, one at \$16,000 and one at \$17,000. The appraised amounts were based on the cash amount that an automobile dealer would pay for the vehicle. On May 21, 1997, the FERF former President purchased the 1996 vehicle from the BCC Foundation for \$16,500; however the registered owner of the vehicle at the time of the purchase was FERF.
- (81) Our audit disclosed that there was nothing of record to indicate the basis relied upon by the Board in determining the necessity for purchasing a vehicle for the President, no bids were obtained by FERF for the vehicle acquisitions, and there was no prior official Board of Directors approval for several actions, including the lease of the 1994 vehicle and the borrowing for the purchase of the 1996 vehicle. Acquisition of the vehicles should have been of particular concern to the Board given the financial condition of FERF. The loan from the BCC Foundation was approved by the FERF Board via “Action Without Meeting by Unanimous Written Consent” on September 17, 1996, after the loan had been recorded in the

Brevard County Official Records on August 28, 1996. Further, the disposition of the vehicle to the former President of FERF was made without the benefit of a public sale or other competitive procedures. In the absence of competitive procedures in both the acquisition and sale of the vehicles, and in view of the relationships between the parties to the transactions, FERF could not be assured that the purchases and sales were made on an economic and efficient basis, without any consideration of favoritism, and in the best interests of FERF, BCC, and the State.

- (82) We recommend that all future purchases and sales of vehicles be made on a competitive basis subject to prior Board of Directors approval. Additionally, the Board should carefully review and document its basis for acquiring vehicles for assignment to FERF personnel.
- (83) **The current FERF President stated, in his written response to paragraphs 77 through 82, that the sale of the vehicle to the former FERF President was done using a competitive process, but did not provide any documentation to support that statement. While the College did receive two estimates of the cash value of the vehicle from automobile dealerships, we have not been provided with any documentation indicating that the vehicle was offered for sale to anyone other than the former FERF President or that any bids, formal or otherwise, were sought or considered from other interested parties.**

Travel Expenditures

- (84) Our examination of travel expense reimbursements disclosed questionable travel reimbursements totaling \$1,611.50 to the former FERF President. These reimbursements were included in payments to the former FERF President totaling \$2,424.00 for 10 trips, primarily to Tallahassee, during the period from December 1994 through June 1995. Nine of the reimbursements were made from BTRL accounts and one was made from a BCC account. According to travel vouchers filed by the former FERF President, the purposes of these trips were primarily to meet with the architect and construction manager regarding the construction of the BTRL building and to discuss funding matters with representatives from the Florida Department of Environmental Protection, Florida Department of Education, and others. Included in the amounts reimbursed to the former FERF President were mileage reimbursements totaling \$1,611.50, based on 25 cents per mile driven.

(85) As discussed in paragraphs 77 through 83, the former FERF President was provided the use of a vehicle leased by FERF during the period of travel. While the travel vouchers did not identify the vehicle used for these trips, the BCC Associate Vice-President for Accounting and Finance stated in a memorandum dated October 31, 1997:

“As I stated in my E-mail to Mr. Whitcomb (5/17/95) I don’t believe the college is required or even should be concerned with who owns a vehicle that is being driven for the benefit of the college (unless of course it is a vehicle owned by the college).

“This situation is different only by the fact that FERF purchased the vehicle Mr. Adams was driving. I however, was not aware then and am not aware now that FERF paid/pays for insurance and gasoline on this vehicle. If this is in fact true and I was aware of it I would have recommended that no reimbursement be made at all for mileage!”

(86) Since the vehicle was leased by FERF at that time, it appears to be inappropriate for BTRL to pay the mileage expenses for travel by the former President. Correspondence provided to us from the former President of FERF states that checks received for the travel reimbursements were endorsed by him and then deposited to FERF’s account. However, our review indicates that the reimbursements were not deposited to FERF accounts. We recommend that FERF obtain documentation to demonstrate any amounts reimbursed to FERF for travel payments made to the former President or that FERF reimburse BTRL for the mileage payments received by the former President while he was assigned a FERF vehicle.

(87) **The current FERF President stated in his written response to paragraphs 84 through 86, that the former FERF President reimbursed IRREI, rather than FERF as we had previously been informed, for the mileage reimbursements and that check numbers, check amounts, and IRREI deposits corresponding to all travel reimbursements have been located. However, the FERF President did not provide us with such documentation with his response. In any case, it is not apparent why the former FERF President reimbursed the travel money to IRREI, a corporation on which the former FERF President served as a founding Director and President, rather than FERF, which provided the vehicle.**

Bonded Debt

- (88) On October 1, 1994, the City of Palm Bay issued Lease Revenue Bonds (Series 1994A) in the amount of \$8,955,000 and Taxable Lease Revenue Bonds (Series 1994B) in the amount of \$140,000 and loaned the proceeds to the Florida Education and Research Foundation, Inc. (FERF), to finance the acquisition of 44 acres of land by FERF and the development and construction of a 35,000 square foot building. The 1994A and 1994B bonds were issued at discounts of \$448,108.20 and \$1,815.80, respectively. The bond indenture provided that the land and building would be leased to the Brevard Teaching and Research Laboratories, Inc. (BTRL), to be used as part of a research and development park. Accordingly, FERF entered into a Lease-Purchase Agreement with BTRL on October 1, 1994. Under this Agreement, BTRL leased the land and building from FERF, agreeing to make rent payments in amounts that, together with proceeds from land sales, are sufficient to meet the debt service obligations under the terms of the bond indenture.
- (89) On March 23, 1995, the City of Palm Bay adopted a resolution providing for reissuance of the Series 1994A bonds in order to take advantage of interest rate reductions related to an investment grade rating obtained subsequent to the initial issuance of the bonds. The bonds were sold at a discount to the underwriter. Accordingly, on April 1, 1995, the City issued Lease Revenue Refunding Bonds (Series 1995A) in the amount of \$9,360,000. The proceeds of this issue were used to refund the Series 1994A bonds at par of \$8,995,000, pay a three percent redemption premium of \$268,650, pay \$100,000 into the interest fund, and pay \$36,350 into the expense fund to cover certain costs of issuance. The Series 1994A and Series 1994B bonds were held by the underwriter during the six-month period from their issuance on October 1, 1994, through the reissuance of the Series 1995A bonds on April 1, 1995.
- (90) The following provides a recap of the proceeds of the issue, the issuance costs, and the amount generated for capital facilities:

Total Proceeds Generated from Bond Issues:		\$ 9,745,447.68
Costs and Fees:		
Underwriter Costs and Fees	\$ 900,214.27	
Bond Counsel and Attorney Fees	219,645.97	
Development Consultant Fees	475,308.26	
Financial Advisor Fees	38,376.49	
Other Fees and Expenses	<u>271,395.99</u>	
Total Costs and Fees		<u>1,904,940.98</u>
Balance Available after Issuance Costs and Fees		7,840,506.70
Amount Deposited to Reserve and Sinking Funds		<u>1,570,008.51</u>
Balance Available for Land Acquisition and Construction		<u>\$ 6,270,498.19</u>

(91) The result of the above is that debt of \$9.5 million (\$140,000 and \$9,360,000) was incurred and must be repaid in order to generate only \$6.27 million for land and facilities acquisition. Details of the bond issues and a further breakdown of the costs and fees are included in the following paragraphs.

(92) The 1994A and 1994B bond issues dated October 1, 1994, in the amounts of \$8,955,000 and \$140,000, respectively, were not rated by a bond rating service and carried interest rates of 7.75 and 8.5 percent, respectively. The 1995A bond issue dated April 1, 1995, in the amount of \$9,360,000 (to refund the \$8,955,000 issue) was rated by Moody's Investors Service as "Baa" or medium investment grade bonds and carried interest rates ranging from 6.1 to 7.0 percent. According to Moody's Investors Service, the basis for the rating was a resolution passed by the BCC Board of Trustees on January 23, 1995, which stated:

"The Board of Trustees hereby covenants to use its best efforts, in its sole judgement, to provide for the Lease Payments in each annual proposed budget within the restricted fund category. The Board of Trustees agrees to take such action as may be necessary to include an amount equal to Lease Payments due under the Lease Agreement as a separately stated line item in its annual budget within the restricted fund category and to use its best efforts, in the sole judgement of the Board of Trustees, to allocate such amount in each Fiscal Year from legally available resources, which specifically excludes general revenue funds appropriated by the State to the College unless prior approval to use such funds for such purpose is received from the State Legislature. All funds allocated by the Board of Trustees to pay Lease Payments, on behalf of Brevard Labs, shall be paid directly to the Trustee. THE PAYMENTS DUE UNDER THE LEASE AGREEMENT ARE TO BE MADE ONLY FROM PLEDGED REVENUES, AS DESCRIBED ABOVE, AND THE BOARD OF TRUSTEES'S LEGALLY AVAILABLE RESOURCES ALLOCATED FOR SUCH PURPOSE. EXCEPT WITH RESPECT TO PLEDGED REVENUES OF BREVARD LABS

HELD BY THE COLLEGE, NOTHING IN THE LEASE AGREEMENT CREATES A LIEN OF ANY KIND OR CHARACTER WHATSOEVER UPON ANY FUNDS, INCOME OR REVENUES NOW EXISTING OR HEREAFTER HELD, COLLECTED, RECEIVED, ANTICIPATED BY, OR AVAILABLE TO THE COLLEGE. IN ADDITION, THE OBLIGATION OF BREVARD LABS UNDER THE LEASE AGREEMENT IS NOT A GENERAL OBLIGATION AND DOES NOT CONSTITUTE A PLEDGE OF THE FULL FAITH AND CREDIT OF THE BOARD OF TRUSTEES, THE COLLEGE, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF.”

- (93) Based on our review of the Moody’s *Daily Recap* dated March 24, 1995, and the more detailed *Credit Report* dated March 27, 1995, it is apparent that the bond rating of “Baa” was based, at least in part, on the BCC resolution. Moody’s *Daily Recap* states, in part, “The bonds are secured by a resolution of the College’s board pledging annual support to Brevard Labs in an amount equal to debt service on the 1995A Bonds. The College’s annual support will be remitted directly to the Series 1995A Bonds’ trustee on behalf of Brevard Labs.”
- (94) The BCC in its response dated May 23, 1997, to our audit report No. 13000 stated:
- “The BCC Board was asked to lend its support to the project through resolutions, and the Board passed those resolutions, however, the bond documents were carefully drafted to insulate BCC from any liability toward the repayment of the bond issue. Despite the language protecting the Board from liability, the project was attractive to the investment community, and the bonds were sold and were eventually given a Baa investment grade rating.”
- (95) In our audit report No. 13000, paragraph 49, on BCC, dated May 28, 1997, we noted that substantial payments were made by BCC to BTRL and stated, "Although Florida Statutes permit boards of trustees to allow these organizations to use College property, facilities, and personal services (including personnel and payroll processing), we question whether it was the intent of the Legislature to authorize colleges to routinely pay significant operating costs of a college’s direct-support organization without reimbursement. That is, the intent of establishing a direct-support organization is for such organization to generate additional financial support for authorized college activities rather than to require the college to provide financial support for the organization to maintain its operation.”

- (96) In October 1997, Moody’s Investors Service lowered its rating on the 1995A bonds to a “Ba” rating. According to Moody’s Investors Service, bonds which are rated “Ba” are said to have speculative elements and their future cannot be considered as well assured.
- (97) Our review of the circumstances surrounding the issuance of these bonds are discussed under appropriate subheadings below.

Bond Issuance and Other Related Costs

- (98) The total amount disbursed by the Trustee from the bond construction and expense accounts was \$9,745,447.68, as follows:

Par Value of Bonds after Refunding	\$ 9,500,000.00
Construction Fund Expenses Paid from Accrued Interest on Investments	202,009.33
Expense Fund Expenses Paid from Accrued Interest on Investments	3,326.81
Accrued Interest on Bonds	41,927.34
Discount on 1994B Bonds	<u>(1,815.80)</u>
Total Disbursed	<u>\$ 9,745,447.68</u>

- (99) Following is an analysis of the total amount disbursed by the Trustee from the bond construction and expenses accounts:

Direct Project Costs:		
Construction of BTRL Building	\$	4,345,199.04
Purchase of Land, 44 Acres		1,623,311.97
Other Project Costs		<u>301,987.18</u>
Total Direct Project Costs	\$	6,270,498.19
Issuance Costs:		
Paid to Underwriter:		
Underwriter Fees		181,900.00
Original Issue Discount		448,108.20
Redemption Premium		268,650.00
Underwriter Expenses		<u>1,556.07</u>
Total Underwriter Expenses		<u>900,214.27</u>
Other Issuance Costs:		
Development Consultant		475,308.26
Bond Counsel		104,633.70
Attorney Fees		115,012.27
Financial Advisor		21,376.49
Development Consultant as Financial Advisor		17,000.00
Management and Other Fees		15,567.38
Title Search		2,215.00
Printing of Bonds		<u>2,000.00</u>
Total Other Issuance Costs		<u>753,113.10</u>
Total Issuance Costs		1,653,327.37
Required Deposits to Debt Service and Interest Funds:		
Debt Service Fund (Series 1994A and 1994B)		793,200.00
Interest Fund (Series 1994A and 1994B)		644,685.51 (1)
Interest Fund (Series 1995A)		<u>132,123.00</u>
Total Deposits to Debt Service and Interest Funds		1,570,008.51
Other Costs:		
BTRL Expenses		79,115.37
FERF Expenses		92,674.06
FPPOA for Maintenance of Land		20,000.00
IRREI Expenses		41,324.18
Accounting and Auditing Fees		18,500.00
Total Other Costs		<u>251,613.61</u>
Total Disbursed	\$	<u>9,745,447.68</u>

(1) Of this amount, \$372,067.82, representing the interest earned on the bond proceeds while the bonds were held by the underwriter, was paid to the underwriter.

(100) The amount shown in the above tabulation as expended for direct project costs or deposited for payment on the bonds represents only 80 percent of the total amounts disbursed as a result of the bond issues (64 percent for the bond project, \$6,270,498.19, and 16 percent deposited to debt service and interest funds, \$1,570,008.51), while the issuance and other costs on the bond issue was 20 percent, which is excessive. As indicated above, payments totaling \$38,376.49 were made for financial advisory services related to these debt issues. Of this amount, \$21,376.49 was paid to a financial advisor and \$17,000 was paid to the Development Consultant (see paragraph 109). However, in light of the significant costs incurred to issue this debt, it is not evident on what basis the determination was made that this debt financing was in

the best economic interest of the public, BCC, and BTRL. Additionally, as further discussed in paragraph 109, the Development Consultant was to be paid for various services related to the project to be financed from the debt proceeds. Accordingly, it is not evident on what basis a determination was made that the Development Consultant, who was hired to perform consulting services on May 10, 1993, approximately 17 months prior to issuance of the bonds, could provide independent financial advisory services relating to issuance of the debt.

- (101) **In his response to this finding the current President of FERF states that FERF relied on the opinion of bond counsel and that the conclusion of bond counsel is that the costs were not excessive. In his response the FERF President refers to documentation provided by the bond counsel. We have reviewed documentation from bond counsel provided to us by the FERF President and find that this information addresses only the amounts received by the underwriter and does not address the myriad of other charges made to the bond proceeds. The information we were provided does not opine that costs totaling 20 percent of the issue were reasonable.**

Unauthorized Use of Bond Funds

- (102) The bond indentures for the bond issues included provisions specifying the proper uses of the bond proceeds and interest earned thereon. These uses, as set forth in Article 5 of the Bond Indenture included interest on the bonds, prepaid lease payments, redemption of the refunded bonds, issuance costs, and project costs. Project costs, as defined in the Lease-Purchase Agreement, included the following:

Land	\$ 1,602,412
Building	4,200,000
Tap and Impact Fees	100,000
Architect/Engineering Fees	310,800
Development/Project Management Fees	447,750
Environmental Survey	8,000
Soil Testing	12,000
Contingency	<u>227,838</u>
Total Projected Budget	<u>\$ 6,908,800</u>

- (103) The amounts paid from the proceeds and interest for these bond issues included several amounts (listed as Other Costs in the tabulation in paragraph 99) totaling \$251,613.61 for

which documentation was not available to demonstrate that they were related to the purposes for which the bonds were issued and included in the project budget as described above. A detailed schedule of these questioned payments is included on Exhibit C. The invoices supporting these payments generally did not identify the specific goods or services provided or identified goods or services that did not relate to the project costs.

(104) In a letter to us dated January 13, 1998, the BCC Vice-President for Business Affairs described his procedures for approval of the bond construction draws and stated, “At the time the draw left my office all documentation was attached, and in my opinion, all documentation was sufficient.” In order to evaluate the propriety of the draws, we examined both the original draw documentation at the offices of the bond trustee and the copies located at BTRL. Documentation necessary to demonstrate that the payments discussed above were related to the purposes of the bond issue was not found at either location. In his letter dated January 13, 1998, the Vice-President further stated that the audit fees (included in the questioned payments listed on Exhibit C) were paid as part of the cost of the bond project and a representative of the bond underwriter, which also held the bonds, specifically approved payment of those fees as an appropriate expense. However, the Vice-President did not provide documentation to demonstrate the basis for concluding that the audit fees were authorized by the Bond Indenture. We recommend that FERF review these payments and seek recovery of any amounts determined to be unauthorized under the terms of the Bond Indenture. Any recovered funds should be returned to the Trustee and restored to the appropriate bond fund.

(105) **The current FERF President stated, in his written response to paragraphs 103 and 104, that the bond documents authorized the payment of audit fees. The FERF President referred to the definition of “Costs of Issuance” in the bond indenture, which included “auditors fees and charges and reimbursements” related to the execution, sale, and delivery of the bonds. It is not apparent how the fees for payment of the annual audits of FERF and BTRL could be considered as related to the execution, sale, and delivery of the bonds. These audits are required by law, whether or not bonds are issued. As noted previously, we note that the interim BCC President indicates, in his written response, that BCC would review all transactions relative to the bond issuance and facility construction to determine whether any moneys are owed to BTRL, BCC, and/or the Bond Trustee and seek recovery, as appropriate.**

- (106) Included in the payments discussed in the preceding paragraph were payments to FERF which resulted in a diversion of bond proceeds to FERF from the purposes for which the bonds were issued. In order to minimize the construction project costs, materials and supplies used in the construction of the Brevard Laboratories facility were purchased directly from vendors and suppliers, rather than by the construction manager, so that the materials and supplies would be exempt from the State sales tax. Savings of \$17,746.71 resulting from this process were remitted to a trust account pending approval of FERF's tax exempt status and subsequently remitted to FERF. As a result BTRL, which, as discussed in paragraph 112, is responsible for the debt service on the bonds, did not receive the benefit of the savings to the extent that such savings were not retained in the bond accounts to reduce the cost of construction or the debt service requirements.
- (107) We are unaware of any authority for the payments to FERF of amounts saved by use of the sales tax exemption. We recommend that any sales tax savings paid to FERF be returned to the Trustee and restored to the appropriate bond fund.

Selection of Underwriters, Construction Manager, and Other Service Providers

- (108) While the bonds described above were issued by the City of Palm Bay, they were issued on behalf of FERF to finance the acquisition of land and construction of facilities to be used by BTRL. The bonds were issued by negotiated sale through an exclusive agreement with an underwriter. Through a loan agreement between the City of Palm Bay and FERF and the lease-purchase agreement between FERF and BTRL (see paragraphs 112 through 117), FERF and BTRL are responsible for accumulating resources for the repayment of the bonds. As a result, FERF and BTRL should have had a strong interest in assuring that the bonds were issued at the lowest possible cost.
- (109) As indicated in the tabulation in paragraph 99, the underwriter for these issues was paid \$900,214.27 for fees, expenses, an underwriter's discount, and a redemption premium and \$372,067.82 for accrued interest earned on the bond proceeds while the bonds were held by the underwriter. The architect and the construction manager for the construction of the Brevard Laboratories facility were paid \$319,914.83 and \$2,347,104.15, respectively, from the proceeds of the bond issues. Additionally, a total of \$1,980,167.24 was paid to various vendors or contractors for materials and labor related to completion of the project facilities. Our review of the payments made from the bond proceeds and related interest earnings

disclosed payments to several professionals, in addition to the underwriter, architect, and construction manager, for services rendered in connection with the bond issues. Following is a summary of such payments:

- *Bond Counsel and Other Attorneys.* Payments to the bond counsel totaled \$104,633.70 and payments to other attorneys totaled \$115,012.27. In addition to bond counsel fees, the legal services identified on the invoices included legal services for BTRL, preparation of a legal opinion, counsel to FERF, counsel to City of Palm Bay, and expenses. Our review of FERF records disclosed no documentation to demonstrate that the bond counsel and other attorneys were selected competitively and that written agreements had been entered into identifying the specific services to be provided and the amounts to be paid for such services.
- *Financial Advisor.* Payments to the financial advisor totaled \$21,376.49. Our review of FERF records disclosed that no documentation was available to demonstrate that the financial advisor was selected competitively. Also, a written agreement identifying the specific services to be provided and the amounts to be paid for such services was not available for our examination.
- *Development Consultant.* Payments to the development consultant totaled \$492,308.26. The invoices submitted for these payments indicated that the payments were for development and consulting services and expense reimbursements. However, these invoices were not adequately supported by documentation demonstrating the specific services provided or did not provide an adequate basis for determining how the amounts paid related to the bond project. The services to be provided by the consultant, Educational Facilities Group, Inc. (EFG), were set forth in a contract between EFG and FERF dated May 10, 1993. These services included assisting FERF in responding to requests for proposals that FERF might receive from BCC or other users of the properties to be developed; exploring issues related to land acquisition and development; assisting FERF in dealing with various professionals; providing feasibility or market studies; obtaining necessary permits and approvals; obtaining financing commitments; advancing interim funding; assisting in design and leasing activities; and assisting in negotiations for the acquisition of land. The contract specified a fee of 5 percent of the bond issue (\$447,750, based on the par value of the 1994A issue). In addition to the

contract amount, the consultant was paid \$27,558.26 for expense reimbursements and \$17,000 for financial advisor fees and expenses. The contract provided for the reimbursement of expenses, but did not provide for fees and expenses for financial advisor services. We were provided with no other contract with the consultant authorizing payment for financial advisor services.

- (110) Our review of bond-related FERF documents provided for our examination disclosed no indications of the use of competitive selection procedures for securing the services of the underwriter, the architect, the construction manager, and the other professionals listed above. The Vice-President for Business Affairs, at our request, obtained from the construction manager documentation of quotes received by the construction manager for various materials and labor related to construction of the project facilities. However, records were not available to evidence that this documentation had been reviewed by BCC or BTRL personnel and that appropriate bid procedures had been applied in the selection of the vendors and contractors who were paid for materials and labor. The determination of the most cost-effective method for selling bonds must be made by the governing body after careful consideration of a variety of factors, including the type of issue, pledged revenue sources, bond ratings, amount of issue, financial condition of the issuer, and market conditions. In a letter dated August 12, 1994, to the BCC Vice-President for Business Affairs, the General Counsel noted, in part, "... the College should be aware and give serious consideration to matters such as competitive selection of the architect, competitive bidding of the construction project, as well as the involvement of the State Department of Education Facilities Department and the need for educational specifications and so forth." Our review of FERF records did not disclose the basis used by FERF in deciding that noncompetitive negotiated sales were appropriate for the issues and that competitive selection of the architect, construction manager, and other consultants were unnecessary.
- (111) Competitive selection procedures are generally used to provide objective assurance that the best services and interest rates are obtained at the lowest possible cost and to demonstrate that selection procedures are free of self-interest and personal or political influences. Furthermore, competitive practices reduce the opportunity for fraud and abuse, and are fair to competing finance professionals. The lack of competitive selection procedures, in combination with a lack of contracts and inadequate documentation of services provided, provides very little assurance in this regard. Any decision to forego competitive practices should be documented

in FERF records as to the basis for such decision. We recommend that FERF enter into contracts for all services provided and that such contracts, together with documentation of the services provided pursuant thereto, be retained in FERF's records.

Lease-Purchase Agreement

- (112) BTRL is responsible for accumulating resources to meet the debt service requirements on the bonds issued for the Brevard Teaching and Research Laboratories project by the terms of its Lease-Purchase Agreement with FERF. However, as evidenced by the deficit fund balances accumulated by BTRL and the support provided to BTRL by BCC (see paragraph 13), it is apparent that adequate consideration was not given to the ability of BTRL to accumulate resources adequate to meet the debt service requirements.
- (113) As described in paragraphs 88 and 89, the 1994A and 1995A Series bonds were issued by the City of Palm Bay on behalf of FERF to fund land acquisition and building construction for the BTRL adjacent to the Brevard Community College's Palm Bay Campus. FERF is responsible for making the debt service payments on the bond issues from moneys provided by BTRL pursuant to a Lease-Purchase Agreement between FERF and BTRL, dated October 1, 1994, as amended on April 1, 1995. Under the terms of this Agreement, BTRL initially leased from FERF 44 acres of land and a 35,000 square foot building constructed with the bond proceeds. BTRL is required to make lease payments to FERF in accordance with a rate schedule designed to provide FERF sufficient moneys to make the debt service payments. The primary source of revenues of BTRL is laboratory user fees. When the debt service is fully paid, title to the land and buildings will belong to BCC.
- (114) While BTRL, under the terms of the Lease-Purchase Agreement, initially leased 44 acres from FERF, and therefore was responsible for funding the entire debt service for the bond issue, BTRL was utilizing only a 3.7 acre parcel of land on which the laboratory facility was constructed. At a \$43,260 per acre value ("the required sales price specified in the First Supplement to Mortgage and Security Agreement"), which is high in comparison to recent sales in the area, the value of the land utilized by BTRL was approximately \$160,000. The direct building costs of the facilities constructed for BTRL totaled \$4,647,186. Accordingly, the estimated value of the assets utilized by BTRL totaled \$4,807,186, whereas the bonded debt, to be serviced by BTRL, totaled \$9,500,000. The "First Supplement to Mortgage and Security Agreement" allows the sale of the remaining acreage for \$43,260 or more per acre

(including a redemption premium) up to a maximum of \$1,690,000, with the proceeds of such sales to be used to reduce the outstanding debt. As a result of the sale or other disposition, the land under lease to BTRL has been reduced; however, BTRL is still paying for debt service on 32.28 acres of land (44 acres of bond land, less 9.92 acres acquired by BCC and 1.80 acres released for the Clean Room site, see paragraphs 120 and 121) which is well in excess of the value of goods received and utilized. Because of the excessive acreage included in the Lease-Purchase Agreement, as well as the excessive load on the debt issue (see paragraph 100), BTRL is responsible for making lease payments in amounts that significantly exceed the value of the assets being utilized.

(115) As discussed in paragraph 13, BCC provided support totaling \$3,065,042 to BTRL through June 30, 1997, to supplement BTRL's other revenues and pay the costs of operations of the laboratories and the debt service. Our review of the records of FERF and BTRL and the official bond documents disclosed no feasibility studies or market surveys conducted to assess the ability of BTRL to generate sufficient revenues from user fees or other sources to provide for the cost of operations and debt service requirements. The BCC Vice-President for Business Affairs stated to us in a letter dated January 13, 1998:

“Prior to the bond issue, and continuing on for several years, I met periodically, and sometimes as frequently as weekly, with the top staff of BTR Labs. The purpose of the meetings was to discuss the revenue for BTR, both actual revenue (for existing grants and contracts), and potential revenue.

These discussions also occurred at most BTR board meetings (in fact, they were often the main topic of discussion at the meetings). For a time, before the bond issue became a reality, there was an increased level of activity in this area. All parties were concerned, from BTR staff right up to the BCC President, about whether or not BTR was capable of producing sufficient revenue to pay the bonds. Discussion revolved around ‘income potential,’ i.e., could the Labs produce \$2 million in revenue, as this was the revenue target that we thought it would take to pay everything including the bond payment. In the end, when the potential of the Bio Lab, the wet Chem Lab, the Tox Lab, and the GIS Lab were looked at, all parties involved in those discussions thought that the \$2 million revenue level could be reached. Everyone agreed that it would take hard work, and there were risks involved, but everyone involved in the

months of discussion thought it ‘doable,’ and in the end that was the conclusion presented to the BCC President, and therefore, the bond issue was allowed to proceed to culmination.”

- (116) In response to our inquiry as to the basis for the decision to enter into such an arrangement, the President of BTRL stated: “My signing the lease purchase agreement was based on two key criteria: 1. At the August 26, 1994 Brevard Teaching & Research Laboratories Board of Directors meeting, the following resolution was passed unanimously on a motion by Mr. John D’Albora, seconded by Dr. Bert Purga;

‘Approve the resolution evidenced by the Draft dated 8-19-94 for approvals regarding the Lease Purchase agreement between Brevard Teaching & Research Laboratories, Inc. and Florida Education and Research Foundation, Inc. and authorize the President of the Corporation to execute the necessary documents related thereto.’

The Board members at the time being Mr. John D’Albora, Dr. Michael Helmstetter, Mr. Steve Megregian and Dr. Bert Purga. The direction given to me as a result of this approved resolution, my being a college employee, as well as the fact that the referred Draft was developed in conjunction with the College, made it clear this was the direction the College wished me to proceed. 2. In a meeting with my supervisor (Dr. Bert Purga) shortly before the signing of the bond issue/lease agreement, I raised concerns of BTR Labs’ ability to generate revenues to offset the lease. Dr. Purga indicated that, after conferring with Mr. Megregian, it was the College’s wish for me to sign these documents.”

- (117) In view of the levels of revenues generated by BTRL and the levels of support provided to BTRL by BCC, it appears that the bonds were issued and the Lease-Purchase Agreement entered into without adequate consideration as to the ability of BTRL to fund the debt service. Accordingly, it is imperative that actions be taken to address the ongoing financial commitments from BCC. Any future actions relative to acquiring or developing the FERF/BTRL properties or advancing any new projects should be carefully considered as to the economic impact that such actions may have on BCC. Further, we recommend that the Florida Legislature consider clarifying the circumstances, if any, under which a college direct-support organization may issue debt. Such circumstances might include required review and approval by the Florida Department of Education or other State level review.

(118) **The current FERF President questioned, in his written response to this finding, the statement in paragraph 115 that no feasibility studies or market surveys were conducted and provided copies of revenue and expenditure forecasts that were included in the bond documents. We had previously reviewed these forecasts and other bond documents, but found no documentation of feasibility studies or market surveys which might provide the basis for credible and reliable forecasts.**

Land Transactions

(119) Good business practices dictate that appraisals should be obtained prior to any decision to purchase, sell, or exchange real estate. As discussed in the following paragraphs, our audit disclosed that FERF executed several real estate transactions without obtaining such appraisals. Additionally, minutes of FERF Board meetings did not clearly evidence the Board's consideration of the reasons for these transactions and how these actions were expected to benefit BCC and its missions. As previously noted, under the provisions of Section 240.331, Florida Statutes, a community college direct-support organization is to be organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, the community college.

(120) On May 10, 1993, FERF obtained from Atlantic Gulf Communities Corporation (AGC) an option to purchase 112.17 acres of land located in Palm Bay. On November 9, 1993, FERF obtained from AGC an option to purchase an additional 50.16 acres in the adjacent Port Malabar Subdivision, for a total of 162.33 acres under purchase option contracts (see Exhibit D.). As discussed in paragraph 24, FERF was designated by BCC as a direct-support organization of BCC on November 15, 1993. BCC purchased 25.33 acres from AGC on June 22, 1993, under the FERF option contract, leaving 137 acres still under the option agreement. FERF received from AGC a \$125,000 commission credit. The disposition of the land subject to the option contract was as follows:

- On December 31, 1993, FERF purchased 22 acres of land under the option contract for \$750,000, or approximately \$34,090 per acre. This acreage included 3.7 acres on which the Brevard Laboratories facility was constructed. In order to purchase this property, FERF borrowed \$800,000. Of this amount, \$600,000 was borrowed under a first

mortgage in the property with AGC and \$200,000 was borrowed from the BCC Foundation under a subordinated mortgage on the property.

- On September 30, 1994, FERF purchased another 22 acres. Using the proceeds of the bond issues, FERF paid \$770,000 for the additional 22 acres, paid off the \$600,000 mortgage on the first 22 acres, and paid interest and costs of \$27,634.50. Additionally, \$204,662.47 was paid from the bond proceeds to the BCC Foundation to pay the outstanding subordinated mortgage against the first 22-acre parcel. The 44 acres purchased by FERF is the land purchased from bond funds and referred to as the bond lands in the bond indenture.
- On September 30, 1994, according to the former President of FERF, the \$125,000 commission credit from the 25.33 acres purchased by BCC was used by FERF as a down payment for the purchase of approximately 83.5 acres under the option contracts. The purchase price for this land was \$2,688,000. FERF received a credit of \$225,000 for an easement and gave a mortgage in the amount of \$2,338,000 to AGC. Additionally, FERF agreed to pay other costs associated with the land transactions (e.g., recording fees and back taxes). FERF netted these costs against a \$312,000 contribution credit due FERF from AGC. The balance of \$121,196.11 was remitted to FERF.
- On June 23, 1995, FERF took a note from the Accudyne Corporation in the amount of \$34,560 for 5.4 acres of FERF's option rights. Additionally, on the same date FERF took a note from Accudyne Corporation in the amount of \$8,280 for .23 acres of adjacent land. These notes were later assigned by FERF to the BCC Foundation. On August 15, 1996, FERF paid to the bond trustee \$77,868 to release a 1.8 acre site for the Clean Room to be constructed (see paragraph 12). Moneys for this payment were borrowed from BCC Foundation.
- On September 30, 1996, FERF sold to The North Brevard County Hospital District, d/b/a Parrish Medical Center, 9.92 acres (4 lots) of the 44-acre bond land for \$378,400 (\$38,145.16 per acre). Parrish Medical Center then traded the land purchased from FERF for 6.88 acres of land owned by the BCC at its Titusville campus, resulting in BCC owning four lots of the former bond land. Under the "First Supplement to Mortgage and Security Agreement," bond land could not be sold for less than \$43,260

per acre, including a \$1,260 redemption premium. The difference (\$50,739) between the amount paid for the FERF land (\$378,400) and the required sales price of the bond land (9.92 acres @ \$43,260 or \$429,139) was paid into the Land Sale Redemption account held by the bond Trustee, together with the \$378,400 paid by Parrish Medical Center. The land in Titusville was appraised at \$51,000 per acre (for 7.48 acres as indicated in the appraisal) for a total value of \$381,000. No appraisal was obtained on the 9.92 acres of land sold by FERF. The effect of these transactions was to add \$429,139 to the Land Sale Redemption account, thus reducing the outstanding debt borne by BTRL. The disposition of the various parcels of land included in the FERF option contracts is shown on Exhibit E.

(121) The net results of the various land transactions relating to the 162.33 acres of land under the option contracts are summarized in the following tabulation.

Owner	Acreage (1)
Brevard Community College (25.33 acres purchased on 6/22/93 and 9.92 acres acquired on 9/30/96)	35.25
FERF - BTRL Lab Site	3.70
FERF - BTRL Clean Room Site	1.80
FERF - Other Bond Land (44 acres purchased on 12/31/93 and 9/30/94, less 9.92 acres acquired by BCC, 3.7 acre BTRL Lab site, and 1.8 acre Clean Room site)	28.58
FERF - Other Land Acquired Under Option Contracts	83.50
Accudyne Corporation (5.4 acres plus .23 acres, both acquired on 6/23/95)	5.63

(1) Acreages are generally cited as "more or less" indicating that the total actual acreage may vary from the total acreage cited in the option contract.

(122) On December 10, 1996, FERF entered into a Consolidated Promissory Note which consolidated the unpaid principal of the original \$2,338,000 mortgage (\$2,328,742.50), the unpaid balance of the \$44,000 promissory note (\$41,493.45), and accrued interest on these debts of \$466,921.15 and \$6,439.71, respectively, into one note in the amount of \$2,843,596.81. The consolidated note required payments of principal in the amount of \$25,000 on March 31, 1997, and every June 30 and December 31 thereafter, plus accrued interest until the note was paid. FERF also agree to pay closing costs of \$8,257.95. Under the consolidation

agreement FERF acquired 28.5 acres of additional property which is subject to the note. According to the current FERF President, FERF is in default on the consolidated note. Upon default, all properties subject to the mortgage held by AGC will revert back to the ownership of AGC. If this takes place, FERF will lose title to all properties except the unsold portion of the bond land.

- (123) On September 30, 1994, Port Malabar Interchange Master Association, Inc., deeded 113.1 acres of environmental land, appraised at \$1,360,000 to FERF (see Exhibit D). According to the BCC General Counsel, this land continues to be titled to FERF, subject to a mortgage in favor of the BCC Foundation.
- (124) As previously noted, good business practices dictate that real estate appraisals should be obtained prior to any decision to sell, purchase, or exchange real estate; however, we have not been provided with any appraisals of the bond land. The establishment of a minimum sales price of \$43,260 per acre (including redemption premium) for the bond land presumed that the land could be sold for that amount. The proceeds of such sales are to be paid into the Land Sale Redemption account to reduce the debt owed by BTRL which, under the terms of its Lease-Purchase Agreement with FERF, is responsible for the debt service on all of the lands. To enable BTRL to meet its obligation, it is important that this land be sold and the debt reduced accordingly. However, the only releases of the bond land to date were made through the purchase/exchange of 9.92 acres between Parrish Medical Center and BCC and the 1.8 acres released for the Clean Room.
- (125) Our review of the real estate market around the Palm Bay campus indicated that the real estate market, which peaked in 1992 or 1993, is well below the \$43,260 per acre required minimum purchase price. In purchasing the property, FERF may have relied on some appraisals obtained by BCC for property purchased by BCC in the same area; however, it is apparent that the value of the remaining bond land is currently less than the required minimum price of \$43,260, making disposition of the property at that price very difficult. We recommend that all sales, purchases, or exchanges of real estate be made only after consideration of real estate appraisals which establish the fair market value of the property.
- (126) As previously noted, many of the decisions of the FERF Board of Directors were made without benefit of open meetings. Given the significant financial impact of these transactions, not only to FERF, but BCC as well, it is imperative that the public benefit to be derived from such

actions should be clearly documented in the records of the direct-support organization. Additionally, the deliberations of the Board in approving actions to carry out these transactions should be conducted in a public forum and documented for the record.

Use of College Facilities

- (127) The offices of FERF and BTRL are located at the Palm Bay Campus of BCC and list as their address the address of the Palm Bay Campus, 250 Grassland Road or Community College Parkway, on corporation documents filed with the Florida Secretary of State. As direct-support organizations of BCC (see paragraph 24), FERF and BTRL are authorized to use BCC facilities. However, examination of the activities of FERF and BTRL disclosed several other corporations that listed the same address on corporate filings, but had not been designated as direct-support organizations. These organizations included:

Southeast Display Center, Inc. (name changed from the Center for Excellence for Flat Panel Display Technology and Manufacturing, Inc.)

Indian River Region Environmental Institute, Inc.

The Florida Consortium for Teaching, Testing, Research, and Development, Inc.

Clean Energy Consortium of Florida, Inc.

Foundation Park Manufacturing Center #1, a Florida Limited Liability Company

Foundation Park Incubator Association, Inc.

Research Marketing Associates, Inc. (also d/b/a Research Management Associates)

Florida Education and Redevelopment Foundation, Inc.

The Palm Bay Development Corporation

- (128) The Indian River Region Environmental Institute, Inc. (IRREI), entered into an agreement with BCC to provide certain services to BCC. This agreement provided for IRREI to utilize BCC facilities. Because no value was placed on the services to be provided or the use of BCC facilities, we were precluded from determining whether the BCC was providing use of facilities on a commensurate basis with the services provided by IRREI. No such contracts with the other organizations listed above were provided for our review.

- (129) The scope of our audit included the Foundation Park Manufacturing Center #1, a Florida Limited Liability Company, and the Florida Education and Redevelopment Foundation, Inc.; however, as indicated in paragraph 10, we are unaware of any transactions by these organizations. While the scope of our audit did not include the activities, if any, of the

remaining organizations listed above, we did note that the officers and directors of several of these organizations were also officers and directors of FERF and BTRL and that some of these organizations had contractual relationships with BCC. In the absence of direct-support organization designations for the listed corporations, we are unaware of any authority for their use of BCC facilities. In view of the interrelationships of directors and officers of these organizations with those of FERF and BTRL, the officers of FERF and BTRL should take actions to ensure that these corporations do not use BCC facilities for non-College activities or cite the BCC campus as their official address.

STATEMENTS FROM AUDITED OFFICIALS

- (130) In accordance with the provisions of Section 11.45(7)(d), Florida Statutes, a list of audit findings and recommendations was submitted to Florida Education and Research Foundation, Inc., and the Brevard Teaching and Research Laboratories, Inc. The written responses to the audit findings and recommendations included in this report are shown as Exhibit F.
- (131) **Subsequent to the delivery of the preliminary and tentative audit findings, we were provided with a copy of a memorandum, dated August 19, 1992, to the BCC President from Dr. Tom Denison, who is currently the BCC Dean, College-wide Technical Education, and a response dated September 2, 1992, to that memorandum from the College Vice-President of Business Affairs. These memoranda indicate that certain of the concerns addressed in our current audit of FERF and BTRL, as well as our prior audits of BCC, were brought to the attention of College management by Dr. Denison in August 1992. Pursuant to a request from the former President of FERF, copies of the August 19, 1992, memorandum and the September 2, 1992, response are included as part of the written responses in Exhibit F. We have provided these memoranda, along with another document providing additional details of the matters addressed in the August 19, 1992, memorandum, to law enforcement officials.**

AUDIT AUTHORITY

- (132) Pursuant to the provisions of Section 11.45(7), Florida Statutes, I have directed that this audit report, including all Exhibits thereto, be prepared to present the results of the operational audit of the Florida Education and Research Foundation, Inc., and the Brevard Teaching and Research Laboratories, Inc.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles L. Lester". The signature is written in a cursive, flowing style.

Charles L. Lester
Auditor General

EXHIBITS

The following Exhibits are attached to and form an integral part of this report:

EXHIBIT - A *Related-Party Chart.*

EXHIBIT - B *Schedule of Duplicate Equipment Payments.*

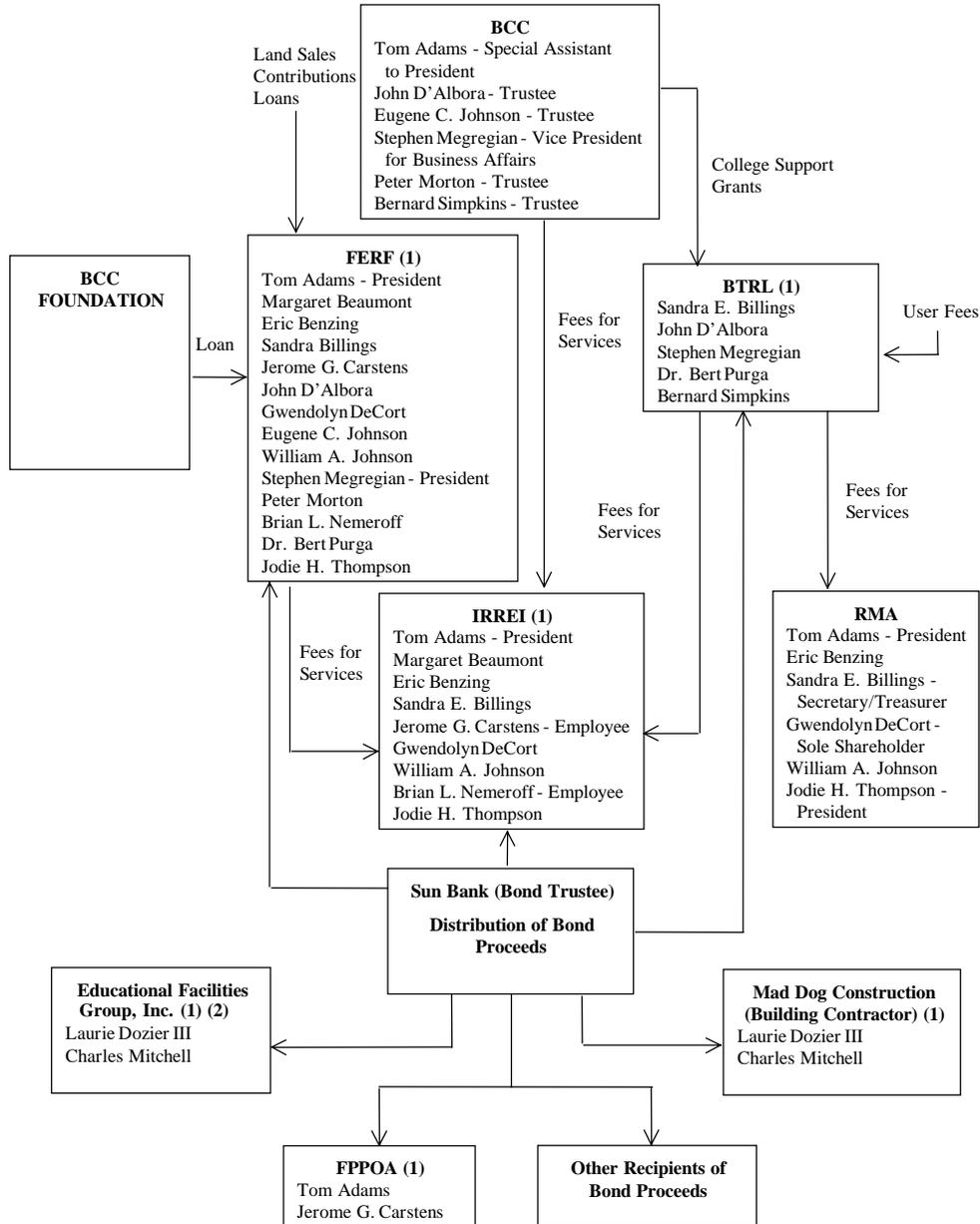
EXHIBIT - C *Schedule of Questioned Payments from Bond Proceeds.*

EXHIBIT - D *Lands Under FERF Option Contracts and Donated Lands.*

EXHIBIT - E *Disposition of Lands Under FERF Option Contract.*

EXHIBIT - F *Statements from Audited Officials.*

EXHIBIT – A
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.,
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
RELATED-PARTY CHART
For the Period June 10, 1991, Through June 30, 1997



(1) The individuals listed for these organizations served as members of the Board of Directors of the organizations a portion of the audit period, except for those individuals listed as employees.

(2) Formerly, Foundation Housing of America, Inc.

EXHIBIT - B
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.,
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
SCHEDULE OF DUPLICATE EQUIPMENT PAYMENTS
For the Period June 10, 1991, Through June 30, 1997

IRREI (I)					BCC		BREVARD LABS					BCC			
INV #	DATE	AMOUNT	CHECK #	AMOUNT	DESCRIPTION	VENDOR	INV #	DATE	AMOUNT	CHECK #	AMOUNT	DESCRIPTION	VENDOR	IRREI #	
12	12/23/91	9,252.00	49266	9,952.00	SHELLFISH ANALYSIS	DYER	149	7/10/92	9,252.00	63573	16,728.99	LAB EQUIPMENT (SHELLFISH)		IRREI #12	
29	3/5/92	9,737.10	55706	17,462.10	CULLIGAN MARK 89 WATER TREATMENT SYSTEM	CULLIGAN	150	7/17/92	9,737.10	63858	11,214.69	CULLIGAN MARK 89 WATER TREATMENT SYSTEM		IRREI #29	
28	3/6/92	4,775.00	55706	17,462.10	LAB FURNITURE - DOWN PAY	OCEANSIDE CABINETS	189	7/23/92	9,900.00	64383	22,880.65	LAB FURNITURE 3 LAB COUNTERS		IRREI #28	
34	3/30/92	4,725.00	11964	4,725.00	LAB FURNITURE - FINAL PAY	OCEANSIDE						3 SINKS, LIGHT TABLE		IRREI #34	
35	3/30/92	4,550.00	57333	6,291.20	LAB FURNITURE - CABINETS	MANNA & SONS	209	8/7/92	4,550.00	65921	21,156.73	LAB FURNITURE 2 LAB COUNTERS AND SHELVES		IRREI #35	
62	5/15/92	1,200.00	60363	7,019.97	3 WATERBATHS - DOWN PAY	LAB TECHTRONICS	208	8/7/92	7,500.00	65921	21,156.73	3 WATERBATHS		IRREI #62	
70	5/26/92	1,330.04	61185	4,805.06	HEATER IMMERSION (6) PUMP (3)	FISHER SCIENTIFIC									
70	-	-	-	-	PROPORTION TEMP CONTROLLER	FISHER SCIENTIFIC									
72	5/28/92	1,496.00	61185	4,805.06	PROPORTION TEMP CONTROLLER	FISHER SCIENTIFIC									
74	6/4/92	100.06	61185	4,805.06	PROBE TUBULAR (2)	FISHER SCIENTIFIC									
84	6/19/92	38.67	61678	2,457.17	TUBING VINYL	FISHER SCIENTIFIC									
86	6/26/92	239.31	62574	458.32	RELAY (3)/50' CORD/3 ADAPTERS	CONSOLIDATED ELEC									
96	7/17/92	3,095.92	63885	12,161.75	3 WATERBATHS - FINAL PAY	LAB TECHTRONICS									
95	7/17/92	6,561.63	63885	12,161.75	CLOSURES & SP SUPP	BAXTER	225	8/21/92	9,065.83	66830	17,749.33	CLOSURES (20MM & 16MM) SP SUPP FOR CLOSURES		IRREI #95	
94	7/10/92	2,504.20	63885	12,161.75	CLOSURES & SP SUPP	BAXTER								IRREI #94	
30	3/5/92	2,050.00	55706	17,462.10	REFRIGERATOR/INCUBATOR	WILLIAM CROMER	260	9/23/92	8,673.12	69708	15,003.24	INCUBATOR/REFRIGERATOR		IRREI #30	
31	3/26/92	1,812.01	57903	8,054.21	HOT PLATE, LAB CARTS	FISHER SCIENTIFIC						69708	15,003.24	HOT PLATE, LAB CARTS	IRREI #31
31	-	-	-	-	NBS CONDUCTIVITY METER	FISHER SCIENTIFIC								IRREI #31	
31	-	-	-	-	UV LAMP LONG/SHORT WAVE	FISHER SCIENTIFIC								IRREI #31	
31	-	-	-	-	PIPET WIDETIP 10 ML	FISHER SCIENTIFIC								IRREI #31	
33	3/24/92	1,195.00	-	-	TURBIDITY METER	HACH								IRREI #32	
40	4/2/92	2,509.89	57735	3,620.59	PIPET WIDETIP	FISHER SCIENTIFIC								IRREI #40	
-	-	-	-	-	WEIGHT SET 1 MG-100GM	FISHER SCIENTIFIC								IRREI #40	
-	-	-	-	-	THERMOMETER	FISHER SCIENTIFIC								IRREI #40	
-	-	-	-	-	PH METER MODEL	FISHER SCIENTIFIC								IRREI #40	
41	4/2/92	1,106.22	57903	8,054.21	PIPETTING MACHINE	FISHER SCIENTIFIC								IRREI #41	
-	-	-	-	-	THERMOMETER	FISHER SCIENTIFIC								IRREI #41	
-	-	-	-	-	THERMOMETER	FISHER SCIENTIFIC								IRREI #41	
-	-	-	-	-	VALVE ASSEMBLY OF PIPET	FISHER SCIENTIFIC								IRREI #41	
37	3/20/92	755.00	57333	6,291.20	MULTIPLIER ASSEMBY GC/MS	FINNIGAN MAT	274	10/8/92	4,106.19	71458	4,768.95	MULTIPLIER ASSEMBY GC/MS		IRREI #37	
56	5/12/92	117.81	59683	677.62	OSTERIZER BLENDER	THOMAS SCIENTIFIC								IRREI #56	
57	5/12/92	193.56	59683	677.62	THERMOMETER	FISHER SCIENTIFIC								IRREI #57	
60	5/15/92	221.25	59410	1,828.06	THERMOMETER	AMSCO								IRREI #60	
73	6/4/92	88.16	61185	4,805.06	BAG SEALER	FISHER SCIENTIFIC								IRREI #73	
74	6/4/92	191.71	61185	4,805.06	FLASK ERLNMEYER 200 ML	FISHER SCIENTIFIC								IRREI #74	
-	-	-	-	-	FLASK VOUMETRIC 100 CL	FISHER SCIENTIFIC								IRREI #74	
84	6/19/92	259.26	61678	2,457.17	AIR PUMP 115 VOLT	FISHER SCIENTIFIC								IRREI #84	
85	6/25/92	163.44	62574	458.32	BTL ASPIR PYREX PLUS	FISHER SCIENTIFIC								IRREI #85	
89	7/2/92	1,985.75	63595	4,824.08	15 MG TAPE DRIVE DG-10	FINNIGAN MAT								IRREI #89	
91	7/10/92	130.25	-	-	ATTENATOR HFP 50 20 DB	BRUKER								IRREI #90	
172	11/6/92	838.00	75968	20,263.09	O-RINGS/CONES	PERKIN-ELMER	366	12/18/92	2,615.70	81762	4,519.09	SKIMMER O-RING (2)/CONES		IRREI #172	
190	11/16/92	94.54	75968	-	ELECTORDE COMBU/ATE 1/4"	FISHER SCIENTIFIC								IRREI #190	
173	11/6/92	179.80	75968	-	DD TUBES	FISHER SCIENTIFIC								IRREI #173	
186	11/16/92	118.32	75968	-	BALANCE SLAB WHITE	FISHER SCIENTIFIC								IRREI #186	
189	11/16/92	118.32	75968	-	BALANCE SLAB WHITE	FISHER SCIENTIFIC								IRREI #189	
179	11/16/92	252.30	75968	-	UTILITY CART/ULTRA SONIC CLE	FISHER SCIENTIFIC								IRREI #179	
184	11/16/92	142.68	75968	-	SYRINGE/PIPETTOR ACCURACY	FISHER SCIENTIFIC								IRREI #184	
180	11/16/92	399.04	75968	-	HOT PLATES (2)	FISHER SCIENTIFIC								IRREI #180	
181	11/16/92	472.70	75968	-	BOTTLE NM 40Z/CENTRIFUGE	FISHER SCIENTIFIC								IRREI #181	
86	6/26/92	130.02	62574	458.32	RELAYS	CONSOLIDATED ELECTR	385	1/21/93	1,258.22	81762	4,519.09	RELAYS		IRREI #86	
88	7/2/92	453.00	63595	4,824.08	BLACK TONER/TONER BAGS	LANIER WORLDWIDE								IRREI #88	
85	6/25/92	19.26	62574	458.32	CLAMP PINCHODK/RUB STOP	FISHER SCIENTIFIC								IRREI #85	
74	6/4/92	33.16	61185	4,805.06	FLASH ERLNMEYER 200 ML	FISHER SCIENTIFIC								IRREI #74	
-	-	-	-	-	FLASK FILTERING 100 ML FUNNEL	FISHER SCIENTIFIC								IRREI #73	
73	6/4/92	222.72	61185	4,805.06	FLASK FILTERING 100 ML FUNNEL	FISHER SCIENTIFIC								IRREI #73	
56	5/12/92	27.70	59683	677.62	JAR 500 ML	THOMAS SCIENTIFIC								IRREI #56	
41	4/2/92	87.00	57903	8,054.21	VALVE ASSEMBLY	FISHER SCIENTIFIC								IRREI #41	
40	4/2/92	146.16	57735	3,620.59	CONTAINER W/COVERS (2)	FISHER SCIENTIFIC								IRREI #40	
31	Mar-92	139.20	57903	8,054.20	THERMOMETERS (8) 1 TO 51C	FISHER SCIENTIFIC								IRREI #31	

66,258.16

66,258.16

(1) The amount in this column represents the amount of the duplicate payment. The actual invoice total is greater in some instances as it included payments for other items.

EXHIBIT – C
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
SCHEDULE OF QUESTIONED PAYMENTS FROM BOND PROCEEDS
For the Period June 10, 1991, Through June 30, 1997

<u>Drawn to Vendor</u>	<u>Draw</u>	<u>Description</u>	<u>Amount</u>
Brevard Teaching and Research Laboratories, Inc.			
Unidentified	1	No description of goods and services provided	\$ 32,014.57
Dr. Stan Bates	4	Consulting Services – Planning labs; brochure preparation during the period 5-18-92 through 3-17-94	10,000.00
Hoyman, Dobson, & Co., P.A.	7	Professional services: audit of 6-30-94 financial statements and study of accounting system	18,100.80
Unidentified	9	Working capital; no description of goods and services	<u>19,000.00</u>
Total Brevard Teaching and Research Laboratories, Inc.			<u>79,115.37</u>
Florida Education and Research Foundation, Inc.			
FERF	1	No description of goods and services provided	9,730.57
Unidentified	3	Services rendered; no description of goods and services	1,329.63
Cox Lumber Co.	4	No description of goods or services	1,398.39
Various	4	Sales tax liability	935.10
Rod Northcutt, Brevard County Property Appraiser	5	Real estate taxes for bond lots (\$14,226.51), property owners assessment (\$4,356), and miscellaneous costs (\$41.16)	18,623.67
Various	5	Sales tax liability	8,595.27
Rod Northcutt, Brevard County Property Appraiser	6	Real estate taxes for bond lots	13,892.49
Various	6	Sales tax liability	2,652.75
Michael Helmstetter	7	Travel reimbursement – meeting with architect	436.24
Various	7	Sales tax liability	2,734.25
FERF	8	Property/project management fee – 10-7-94 to 4-7-95 (\$7,500) and phone charges (\$26.91)	7,526.91
Various	8	Sales tax liability	2,829.34
FERF	9	Telephone charges	17.78
Cox Lumber Co.	10	Plywood (\$119.94) and telephone reimbursement (\$41.20)	161.14

EXHIBIT – C (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
SCHEDULE OF QUESTIONED PAYMENTS FROM BOND PROCEEDS
For the Period June 10, 1991, Through June 30, 1997

<u>Drawn to Vendor</u>	<u>Draw</u>	<u>Description</u>	<u>Amount</u>
FERF	11	Property/project management fee (\$7,500) and phone charges (\$8.58)	\$ 7,508.58
Various	12	Reimbursement of expenses: travel (\$273.50); Telephone (\$46.23); Lawn service (\$100); meeting refreshments (\$26.12)	445.85
FERF	13	Services rendered in preparing draw requests	2,538.76
Various	15	Reimbursement of expenses: Fax charges (\$609.13); telephone (\$65.94); refreshment (\$13.84)	688.91
FERF	16	Labs Dedication (\$3,000.00) and Travel reimbursement - Adams (\$167.25)	3,167.25
JR Office Furniture Co. Inc.	17	No description of goods and services	<u>7,461.18</u>
Total Florida Education and Research Foundation, Inc.			<u>92,674.06</u>
Florida Park Property Owners Association, Inc.			
FPPOA	9	Assessment for clearing, mowing, and maintaining environmental, water storage, and drainage areas on and adjacent to the 44 acres.	<u>20,000.00</u>
Indian River Region Environmental Institute, Inc.			
IRREI	1	No description of goods and services provided	30,929.74
IRREI	3	Services rendered - no description	1,385.18
IRREI	4	Reimbursement for consulting, administrative, and accounting services	2,500.00
Various	4	Reimbursement for refreshments (\$120.67) and travel (\$61.58)	182.25
IRREI	5	Reimbursement for consulting, administrative, and accounting services	2,500.00
Various	5	Reimbursement for Federal Express (\$24.50) and travel (\$469.94)	494.44
Various	6-16	Reimbursement for travel and telephones	<u>3,332.57</u>
Total Indian River Region Environmental Institute, Inc.			<u>41,324.18</u>
Hoyman, Dobson, and Co.			
Hoyman, Dobson & Co., P.A.	9	Professional services: Identifying and recording transactions	4,000.00
Hoyman, Dobson & Co., P.A.	11	Professional services: Identifying and recording transactions	200.00
Hoyman, Dobson & Co., P.A.	12	Professional services: Audit of 6-30-95 financial statements	8,000.00
Hoyman, Dobson & Co., P.A.	13	Professional services: Audit of 6-30-95 FERF financial statements	<u>6,300.00</u>
Total Hoyman, Dobson & Co. P.A.			<u>18,500.00</u>
Total Questioned Payments from Bond Proceeds			<u>\$ 251,613.61</u>

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EXHIBIT - D
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
LANDS UNDER FERF OPTION CONTRACTS AND DONATED LANDS
For the Period June 10, 1991, Through June 30, 1997

- Lands Subject to Initial FERF Option
- Additional Lands Subject to Awarded FERF Option
- Environmental Lands Donated to FERF

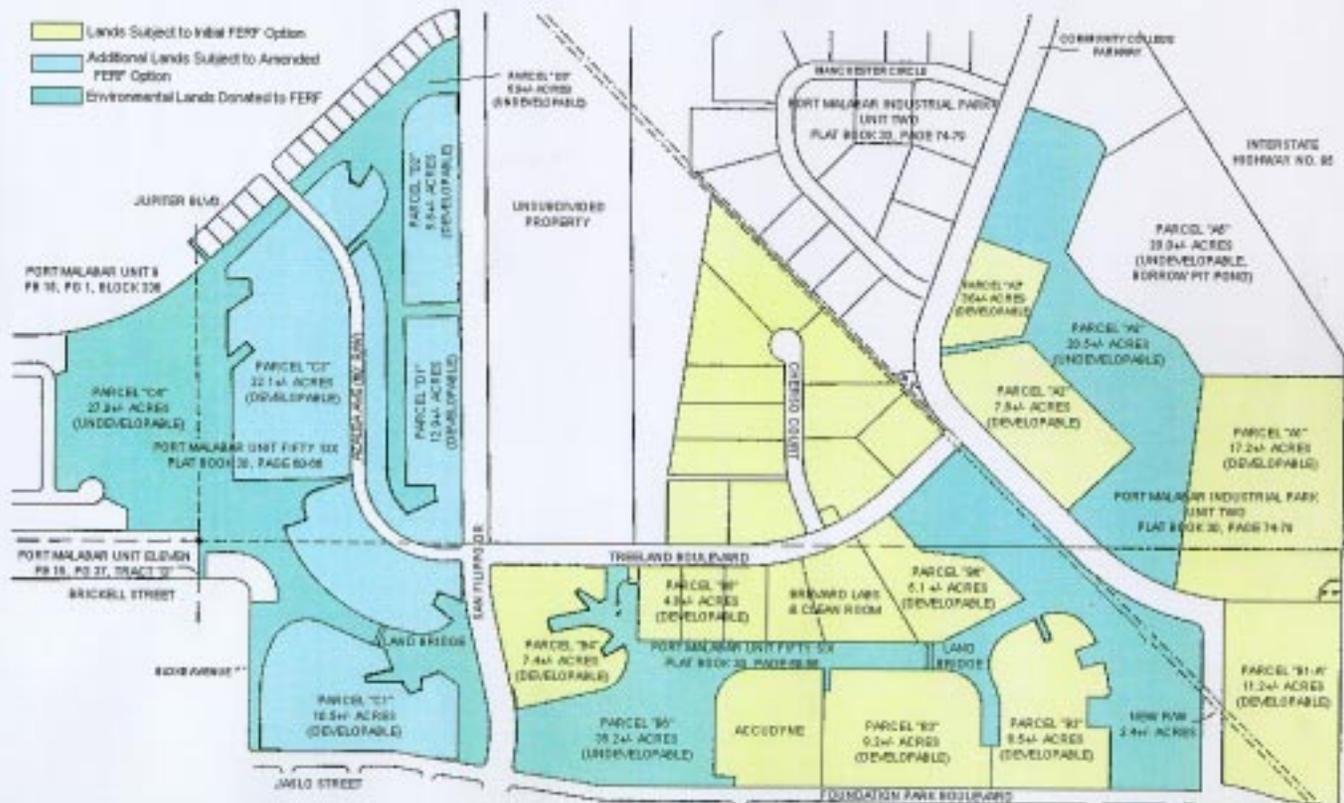


EXHIBIT - E
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
DISPOSITION OF LANDS UNDER FERF OPTION CONTRACT
For the Period June 10, 1991, Through June 30, 1997

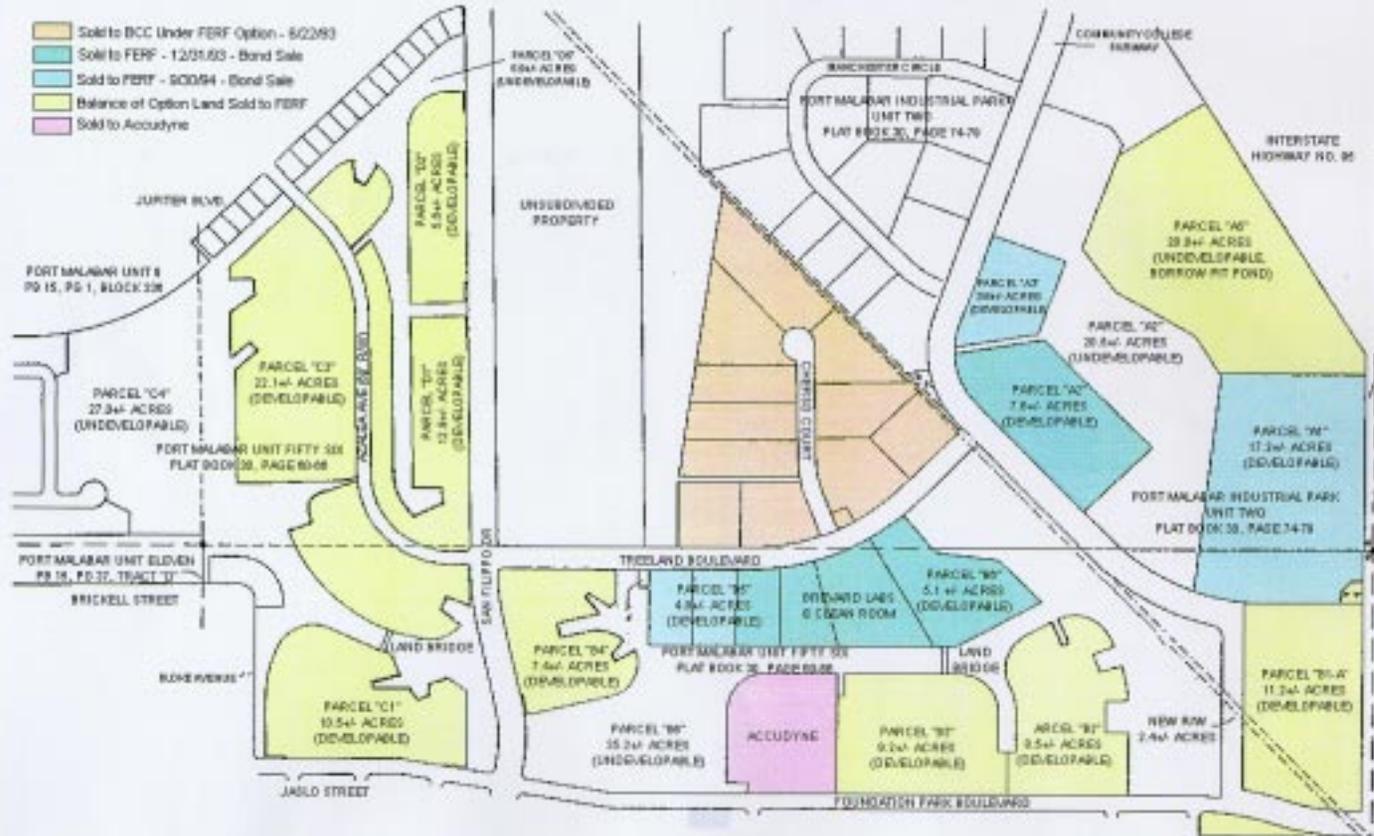


EXHIBIT – F
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

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February 25, 1998

Mr. Charles L. Lester, C.P.A.
Auditor General, State of Florida
P.O. Box 1735
Tallahassee, Florida 32302-1735

Dear Mr. Lester:

The Brevard Community College Board of Trustees at their February 16, 1998 board meeting appointed me to the position of Interim District President of the College. My priorities since my appointment have focused upon ensuring a smooth transition of leadership and the Auditor General's Preliminary and Tentative Audit Findings of Brevard Teaching and Research Laboratories and the Florida Education and Research Foundation.

I have conducted a thorough review of the preliminary and tentative audit findings and have found them to be most disturbing. Although I am most concerned with activities that may be considered illegal, I am equally concerned about activities and issues that merely create the perception of impropriety. I can assure you that I will take the necessary actions to ensure that these kinds of activities will not occur in the future.

It is my intent, with the assistance of faculty, staff, the Board, and the community, to focus on academics and the quality of teaching and learning by reaffirming our commitment to the instructional goals and mission of the college. I will also form a task group that will be charged with evaluating each Direct Support Organization of the College to determine if its relationship with BCC is proper and genuinely contributes to, and is consistent with, the fulfillment of our mission. I will then begin the formulation and implementation of appropriate policies and procedures that will ensure the integrity of the DSOs and their compliance with all recommendations set forth in the audit report.

Although the evaluation and review process of DSOs will begin immediately, the audit report revealed issues and concerns that require corrective action without delay; therefore, I intend to initiate the following:

(27-31)

1. Implement internal controls at College DSOs that promote and encourage the achievement of management's objectives in the areas of compliance, economic and efficient conduct of operations, reliability of financial records and reports, and safeguarding assets.

TITUSVILLE CAMPUS
1311 North U.S. 1
Titusville, Florida 32796
(407) 632-1111

COCOA CAMPUS
1519 Clearlake Road
Cocoa, Florida 32922
(407) 632-1111

MELBOURNE CAMPUS
3865 N. Wickham Road
Melbourne, Florida 32935
(407) 632-1111

PALM BAY CAMPUS
250 Grassland Road, S.E.
Palm Bay, Florida 32909
(407) 632-1111

PATRICK CENTER
1020 Central Avenue, G-2
PAFB, Florida 32925
(407) 632-1111

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
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- | | | |
|----------------|-----|---|
| (27-31) | 2. | Implement procedures for the review of Direct Support Organization activities to assure that such activities are in accordance with prescribed rules and/or policies and procedures and that appropriate internal controls are in place to ensure such compliance. |
| (32-36) | 3. | DSOs will take action to provide that all future meetings and activities be held in strict accordance with the provisions of the Sunshine Law. |
| (37-40) | 4. | Employees of DSOs will be made to understand that, regardless of their place of employment, all BCC personnel are subject to all BCC policies and procedures. |
| (41-46) | 5. | Develop and implement procedures to ensure that budgets are properly prepared and amended. |
| (47-53)
↓ | 6. | Examine the structure of DSO Boards of Directors to ensure that all business activities operate at arms length and in the best interest of the DSO, BCC and the State. |
| | 7. | Develop a code of ethics for DSOs ensuring that all employees conduct themselves in a manner consistent with Chapter 112 of Florida Statutes. |
| (54-87) | 8. | Establish procurement practices ensuring that DSO transactions are made at arms length and in the best interest of the DSO, BCC and the State. Further, require that documentation demonstrating the propriety, open competitive practices, and contractual arrangements of all expenditures be maintained in the records of the organizations. |
| (88-118) | 9. | Review all transactions relative to the bond issuance and the facility construction to determine whether any moneys are owed to BTR Labs, BCC and/or the Bond Trustee, and to seek recovery, as appropriate. |
| (119-126)
↓ | 10. | Implement procedures ensuring that all development and acquisition of properties by DSOs are carefully considered as to the economic impact that such actions may have on BCC. |
| | 11. | Ensure that all sales, purchases, or exchanges of real estate be made only after consideration of real estate appraisals which establish the fair market value of the property. |
| (127-129)
↓ | 12. | Ensure that no College facilities are used for business unrelated to College activities and that no such entity cite a College address as their office. |
| | 13. | Ensure the clear demonstration of public benefit to be derived from the activities of each DSO. |

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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Please be assured that every aspect of the audit will be addressed, and that the College will continue to work closely and openly with the Office of the Auditor General in resolution of these issues. And, at a later time, I encourage the Auditor General to review the efforts of the College administration and the Board of Trustees to ensure that improprieties such as those identified will not happen again at Brevard Community College.

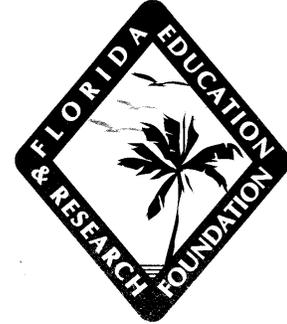
Sincerely,



Michael S. Kaliszeski, Ph.D.
Interim District President

cc: District Board of Trustees, Brevard Community College
Mr. John V. D'Albora, Jr.
Mr. Patrick F. Healy
Mr. Eugene C. Johnson
Ms. Rachel C. Moehle
Mr. Peter J. Morton
Mr. Michael Mattimore, Attorney

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997



Mailing: P.O. Box 2389, Melbourne, FL 32902
250 Grassland Rd. S.E., Palm Bay, FL 32909
Telephone 407-724-8009

February 25, 1998

Mr. Charles Lester
Auditor General
Office of the Auditor General
P.O. Box 1735
Tallahassee, FL 32302

RE: Response to the Preliminary and Tentative Audit Findings

Dear Mr. Lester:

Transmitted herewith is a partial response to the preliminary and tentative audit findings and recommendations regarding your audit of the:

Florida Education and Research Foundation, Inc., and Brevard Teaching and Research Laboratories, Inc., Direct Support Organizations of the Brevard Community College district Board of Trustees for the period July 1, 1994 through June 30, 1997, and selected actions of the Organizations taken from June 10, 1991, through June 30, 1994.

As you are aware, I am the Vice President for Business Affairs for Brevard Community College, I am a member of the BTR Board, and I am a member of the FERF Board and president of FERF. As you are also aware, it is sometimes difficult, if not impossible, to separate the BTR and the FERF issues in responding to the audit, just as it was not practical for your office to do separate audit reports for FERF and BTR. However, to the extent possible, this specific response is the response from FERF, and not the response from BTR. The response from BTR will come separately from its president.

Also, this response should not be interpreted to represent any official position of Brevard Community College. Any official position from the college regarding any matter contained in this audit can only come under the signature of the president of Brevard Community College.

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

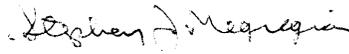
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Mr. Charles Lester
Auditor General
February 25, 1998
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(20-23, 39, 41-45,
112-114,
116-117,
127-129)

With regard to the BTR Labs issues, paragraphs 11-14, 28, 30-34, 90-92, and 94-95 deal with issues related only to BTR, and therefore, this response does not address those paragraphs. Paragraphs 104-106 deal only with Brevard Community College issues and those paragraphs are also not addressed here. The responses herein are to all other paragraphs of the preliminary and tentative audit findings.

Sincerely,



Stephen J. Megregian
President, FERF

SJM:jh

Enclosures

cc: Members, BCC Board of Trustees
Members, FERF Board of Directors
Members, BTR Board of Directors
Dr. Michael Kaliszkeski
Mr. Joe Matheny

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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PARAGRAPH-BY-PARAGRAPH RESPONSE
--

The following responses address all paragraphs except those which were excluded per the cover letter.

In regard to the following paragraphs, the information presented by the auditor appears to be factually correct, and requires no further response:

Paragraphs 1-3, 6-10, 17, 20, 24, 37-38, 60-61, 68-71, 74, 76, 79-81, 86, 98, 100, 102.

(10-12, 15-19, 26,
30, 34, 48-49,
78-79, 88-91, 94,
96, 99, 100, 102,
108, 121, 123, 125)

(13)

Paragraph 4 contains a statement regarding the amount of “support” provided by Brevard Community College. The “support” amount used by the auditor includes grant revenue. That “support” amount also includes temporary cash advances to offset Brevard Teaching and Research Laboratories (BTR) vendor accounts receivable. It is questionable whether or not these items should be included as “support.”

(24)

Paragraph 15 contains quotes from pieces of statutes. The actual wording of Statute 240.331(2) and (3) is as follows:

↓

2. Organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, a community college in this state. The direct-support organization may, at the request of the district board of trustees, provide residency opportunities on or near the college campus for students. Community College Program Fund and Public Education Capital Outlay funds may not be used to construct, maintain, or operate such facilities.
3. An organization which the board of trustees, after review, has certified to be operating in a manner consistent with the goals of the community college and in the best interest of the state. Any organization, which is denied certification by the board of trustees, shall not use the name of the community college which it serves.

The difference between what the auditor presented as “the law,” and what the law actually says is subtle but important. The DSO’s do not operate for the benefit of the state as defined by the auditor. They operate to the benefit of the state as certified by the college board of trustees.

As a matter of record, certification by the BCC board has continued uninterrupted from December 1992 to present for BTR and from November 1993 to present for FERF. Interruption of that certification would jeopardize the standing of a DSO as a DSO.

(25)

↓

Paragraph 16. Attached are multiple legal opinions. Those legal opinions show that serving on a DSO board, and serving as a Brevard Community College (BCC) board member or staff member is not a conflict of interest, and there are no moral or ethical problems whatever in this regard. These legal opinions controvert what the auditors have said in their report. Paragraph 16 contains some information about a non-college organization that was attempting to do business with the college and the St. John’s River Water Management District. According to the Preliminary and Tentative Audit Findings, the “Redevelopment” corporation has some of the same board members as Brevard Community College’s FERF DSO. What is not said, but is important, is that the college Vice President for Business Affairs was a member of the BCC DSO’s board, but the BCC Vice President for Business Affairs was never a member of the “Redevelopment” board, and in fact, he was never associated with the Redevelopment corporation in any way. In addition, as a further clarification regarding this point, and as a matter of record, the college Vice President for Business Affairs was never associated, in any way, with any of the corporations mentioned anywhere in this audit, except for Brevard Community College and its two DSO’s. In regard to Research Marketing Association Inc. (RMA), as a matter of record is now defunct. RMA only operated for a short time, and ceased doing business in the spring of 1994. It was declared inactive by the

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(25)

Secretary of State in 1997. An attempt to clarify this situation during the audit failed to uncover the reason why the CPA firm listed RMA as a subsidiary of FERF, however, that is being corrected and RMA will not appear on the June 30, 1997 FERF financial statement as a FERF asset or subsidiary.

(27)

↓

Paragraph 18 is incorrect in many major ways. If the sunshine law was violated, that statement might have some validity, but according to an attached legal opinion the sunshine law was not violated. If state law required FERF or BTR to bid, then that statement might have some validity, but according to an attached legal opinion, state law did not require either FERF or BTR to competitively bid any transaction. However, in March 1996, the president of Brevard Community College issued instructions to all BCC DSO's requiring bidding, and the Preliminary and Tentative Audit Findings report cited no examples of non-compliance with that memo.

The citing of "lack of documentation" is a matter of interpretation by the auditor. If DSO's were required by law to follow the same rules that BCC follows, then the standard that was used by the auditor in reviewing the transactions of FERF and BTR would be appropriate. But, that was not the case. BTR and FERF, as defined by Florida Statutes, are not state agencies, they are both small companies with very limited operations, staffs, and business expertise. When it comes to standards regarding documentation of its transactions, there is little justification for the auditors to hold FERF (a company of never more than 3 paid employees) to the same standards as the auditor multimillion-dollar state agencies.

The same problem exists with the "contributions" issue. In paragraph 57 eight "contributions" totaling \$81,343.70 were cited by the auditors in coming to the conclusion that this was "inappropriate." However, in response to paragraph 57, the record will show that the information provided by the auditor regarding this issue is seriously flawed in most of the cited examples.

The same problem exists when discussing the "lack of a documented basis for management or board approval of certain actions." Again, the auditors are attempting to audit the DSO's to the wrong standards.

When taken as a whole, virtually every criticism in paragraph 18 is based on opinions presented by the auditor which will be controverted by opinions and evidence presented in rebuttal.

(29)

Paragraph 19 is a product of the mis-conclusion reached in paragraph 18.

(31)

↓

Paragraph 21 recommends that the college implement procedures to review DSO activities and to assure that activities meet rules, controls, etc. As a matter of record, the college has already taken, prior to this audit, the following steps:

- BCC brought all accounting for BTR into the college control accounting department in 1994. BTR accounting transactions have followed BCC rules since 1994
- BCC brought all BTR purchasing into the college in 1994. BTR purchasing has followed BCC rules since 1994.
- All receiving of goods by BTR has followed BCC rules since 1994.
- All BTR checks have been done in conjunction with the BCC central accounting department since 1994.
- All FERF accounting has been done by the BCC central accounting department since May 1996.
- All FERF purchasing has been done by BCC since May 1996.
- All receiving of goods by FERF is now done by the BCC receiving department.
- The BCC internal auditor does internal audits of DSO's upon request.
- The BCC President, on March 13, 1996, issued a directive to all DSO's requiring them to adhere to certain key BCC policies.
- The BCC Board of Trustees has established a DSO Committee to look at the overall organization of all BCC DSO's.

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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- BCC Policy 302.04 which addresses items such as misconduct and misappropriation, has been amended so that all college DSO's are considered the same as the college in the application of these policies.

↓

(31)

In light of all the initiatives listed above, BCC has already taken many initiatives and has put into place, broad procedural and process controls over the activities of FERF and BTR Labs. Although much has already been done, if the BCC Board feels that more controls are necessary, then those additional controls will be adopted by the BCC Board, and FERF will abide by whatever additional action, if any, is taken by the BCC Board.

(32)

In response to Paragraph 22, the attached opinion (see Exhibit FERF-1) from the college counsel shows the sunshine law was not violated because it does not apply to college DSO's.

↓

Despite this legal position regarding what the law requires, the meetings of BCC DSO boards are now open to the public and the college routinely officially notices the meetings of the DSO boards.

(33)

Paragraph 23. Based on the legal opinion contained in Exhibit FERF-1, the conclusion reached by the auditor in paragraph 23 is disputed.

(35)

Paragraph 25. In response to paragraph 25, all DSO meetings are now routinely noticed. However, based on the legal opinion contained in Exhibit FERF-1, the sunshine law was not violated, therefore, nothing else needs to be done regarding past DSO meetings.

(37)

Paragraph 26. In response to paragraph 26, please see the response to paragraph 21, as that response shows the general time lines when controls were put in place, strengthened, etc.

(38)

Paragraph 27. In paragraph 27 the auditor states that the directives contained in the college President's March 13, 1996 memo extended to FERF. That is correct, but incomplete. The BCC President's directive applied to all college DSO's including FERF, BTR, the KCPA Foundation, the CVP Foundation, and the BCC Foundation.

(40)

Paragraph 29. In response to paragraph 29, please see the response to paragraph 21.

(46)

Paragraph 35. As directed by the college, budgets for FERF will be developed and monitored.

(47)

Paragraph 36. A major part of the criticism raised by the auditor is the entire matter of "related party transactions." The legal issues regarding that matter are addressed in two attached legal opinions. See Exhibit FERF-1 and Exhibit FERF-12.

(50)

↓

Paragraph 39. In paragraph 39, many contracts are cited and a table in the audit shows times and dates whereby the former FERF president served in various capacities. In order for a potential conflict of interest to occur, there has to be a shared membership role somewhere (except for contracts between the college itself, FERF, and BTR, where, per Exhibit FERF-1 and Exhibit FERF-12, no conflict can exist). The following is an analysis of the contracts cited by the auditor:

	<u>Date</u>	<u>Parties</u>	<u>Possible Conflict</u>
1.	July 1992	BCC & IRREI	No
2.	July 1993	BCC & IRREI	No
3.	1991-92	BCC & IRREI	No
4.	February 1995	FERF & IRREI	Yes (see the next paragraph)
5.	10/92-10/93	RMA & BTR (3 agreements)	Yes
6.	7/92-8/93	IRREI & BTR (4 agreements)	No
7.	July 1993	BCC & BTR	No

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(50)

↓

Of all the examples cited by the auditor, two could lead to a conflict of interest. They are items 4 and 5 in the chart above. Regarding item 4, the potential conflict was fully disclosed at the FERF board meeting where that contract was presented (see page 2 of Exhibit FERF-2, FERF 2/17/95 board meeting minutes). Item 5 is a potential conflict of interest because one person was a common board member between RMA and BTR. Although that person was also a member of the FERF board for a time, that person resigned from the FERF board before any contracts were entered into with FERF which would have caused a potential conflict of interest to occur with FERF.

After analysis of paragraph 39, there were many shared boards. However, consistent with Chapter 112 FS, "conflict" only exists when there are shared boards or shared employees and a contractual relationship exists. A factual comparison of these contracts showed that of all the contracts cited by the auditor, only the RMA contract with BTR contained shared board members that could lead to a conflict of interest as defined in Chapter 112 FS. Paragraph 39 also raised a salary issue concerning the former FERF president. Attached is a response to that issue from the former FERF president. It is Exhibit FERF-3.

(51)

↓

Paragraph 40 contains a blanket allegation that the BCC Vice President for Business Affairs and the former FERF president each had improper shared membership on various boards. However, the audit report is fundamentally flawed to the extent it inappropriately attempts to equate the actions of the former FERF president to the BCC Vice President for Business affairs. As this audit report shows at Exhibit A, the former FERF president was a college employee, served on the board of various DSO's, and served on the board of other entities that allegedly transacted business with BCC or the BCC DSO's.

On the other hand, Exhibit A to the audit report clearly shows that the BCC Vice President for Business Affairs served only on the board of two BCC DSO's. The attached opinions of legal counsel (see Exhibit FERF-1 and Exhibit FERF-12) conclusively demonstrate that no conflict of interest can arise under Florida laws as a result of the BCC Vice President for Business Affairs' service on the BCC DSO boards. This conclusion is clear both as a matter of Florida statute and based on Florida Supreme Court law. (In fact, even at the state level, all members of the State Board of Community Colleges serve as directors of the Statewide Community College Foundation, a statewide DSO.)

As a matter of law, the BCC DSO's are required to operate in the best interests of BCC. The BCC Vice President for Business Affairs' participation on the BCC DSO boards was consistent with that mandate at all times. Allegations in paragraph 40 of the audit report that the BCC Vice President for Business Affairs had a conflict of interest from his participation in the BCC DSO's are either (a) a result of sloppy work, (b) a fundamental misunderstanding of established Florida laws, or (c) a purposeful and malicious attack on the BCC Vice President for Business Affairs.

(52)

Paragraph 41. See response to paragraph 39 and 40.

(54)

Paragraph 42 contains a theory which is contrary to the legal opinion contained in Exhibit FERF-1.

(55)

Paragraph 43. What is stated in paragraph 43 is correct, however, paragraph 43 is silent regarding what amount of documentation is "appropriate." DSO's must be audited in relation to what they are, which is small corporations (FERF only employed from 1-3 persons during the audit period).

(56)

Paragraph 44. Based on the attached legal opinions, the AGO cited would not apply to DSO's. Paragraph 44 is attempting to justify a standard which is used later by the auditor, but according to the attached legal opinion that standard is not correct in this instance.

(57)

Paragraph 45. If the transactions being audited were for a multi-million dollar state agency, rather than for very small corporations, the conclusion reached regarding lack of documentation would probably be correct.

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(59)

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Paragraph 46. The auditor contends that the “need” for services was not always documented, yet nowhere do the auditors show how those services might otherwise have been obtained. How should need be defined? If a small corporation decides that it does not want an accountant, but instead it wants to outsource its accounting services, what basis does the auditor have to question that delivery method? Small businesses do not write reports to themselves documenting things. Those are not the standards by which small businesses operate. In virtually all cases involving contracts, the contractor and the contractee worked in close proximity to each other and each knew what the other was doing. Taken as a whole, the criticisms contained in paragraph 46 again involve the use by the auditor of standards which were not appropriate to the activities being audited. That is not inconsistent with the quotes from the BTR president and the BTR business manager who were hired in 1993. These employees, when they were hired, brought with them expertise far beyond that which had not previously existed at the Labs. Therefore, the need to outsource these services diminished when the current BTR president and the current BTR business manager were hired, and subsequently the previously outsourced activities for BTR were brought “in house.” However, FERF did not employ additional persons, thereby leaving FERF needing to outsource some business functions.

The auditor also contended that contracts were not bid. Contracts were not bid because as noted in Exhibit FERF-1, bids were not required. Even the State of Florida has discovered that “sealed bids” are not always the best and most efficient ways to purchase a wide variety of goods and services. The State now regularly negotiates contracts (called SNAPS). If the state can negotiate multi-million dollar contracts, why should the auditor opine that a two-person DSO be required to bid when, according to the attached legal opinion, the law itself levies no such requirement?

The auditor also has identified the following FERF payments for further questioning:

1. Soccer Scholarship for \$4,500
2. Loan for \$2,500
3. A car repair, which is \$474.93 of a payment totaling \$523.31

In response to the soccer scholarship, FERF as a not-for-profit corporation has “scholarships” in its charter. Therefore, giving a scholarship is an appropriate FERF activity, and in this case the money to fund that scholarship was donated to FERF for that specific purpose.

Another BCC DSO has been involved in a similar process. That DSO administers a scholarship fund for North Brevard residents who go to the University of Florida. As in the FERF example, no direct benefit occurs to the DSO, but the DSO is accomplishing its mission in administering that earmarked donation, just as FERF was meeting its mission in administering its earmarked donation.

There is no additional information available regarding the loan.

In regard to the \$523.31 item, the concern was the \$474.93 repair bill. The paperwork on file during the audit showed only a credit card slip for \$474.93, and that slip did not contain any documentation as to what vehicle was repaired. The rest of the documentation for that transaction has now been obtained. Exhibit FERF-4, is a copy of that credit card slip, a copy of a repair order for \$474.93 and a copy of the FERF auto purchase contract. Both the repair order and the purchase contract contain the same VIN number, which therefore documents that the vehicle being repaired was in fact the FERF vehicle.

The auditors reported that in “some instances” rates were wrong. That makes it appear that this was a recurring problem. A rate error did occur on one contract and several payments made on that one contract were in error. No other instance was cited anywhere of any payment “errors.”

The issue of “canceling invoices” while still a popular control, is in reality no longer a good control on which to rely. With the advent of high quality high-speed laser printers, original invoices can be rapidly

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- (59) produced and duplicated. Therefore, canceling original invoices, while still a required part of college normal processing, provides little comfort.
- (61) The situation cited regarding signed receiving reports deals only with the time frame when FERF was a two-employee operation. As a two-person operation, everyone in the operation knew what goods were received and when, therefore, there was little need for a “receiving” form. However, since May 1996, all FERF transactions are done according to the college’s rules, and receiving reports are now routinely produced and signed.
- (61) **Paragraph 47.** See response to paragraph 21.
- (62) **Paragraph 48** questions three specific payments, and the responses follow.
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The first item reported is the Bruker payment for \$37,600. As a matter of record, BCC has sent a letter to IRREI in regard to this matter. A copy of that letter is attached as Exhibit FERF-5. A reply from the IRREI president is attached as Exhibit FERF-6.
- The second item was the JR item for \$7,461. Draw request #17 was the closing draw, and its purpose was to close out the construction draw account. The amount of \$7,461 was requested because that was all that remained in the trustee account. The “JR” bill, although larger than \$7,461, was sent as backup because the JR bill was outstanding at that time. All the money received on draw 17 was spent on legitimate costs of the project.
- The third item reported was the \$15,000 management fee. As a matter of record, the BTR board, on June 23, 1995 approved the payment of \$15,000 to FERF for the management fee. However, nothing in that action appears to promote the AGC note to a status superior to a general corporate obligation. In fact, the BTR board minutes seem to reflect that the action taken centered around making sure that no more than \$44,000 ever got sent to AGC. The AGC note was eventually combined with another AGC note, and that new note later became the subject of a foreclosure action by AGC. As the result of the foreclosure action, AGC took back 83 acres of land in return for canceling the note. Had any of the \$44,000 been paid to AGC, that money would have ultimately been lost because of the foreclosure.
- (63) **Paragraph 49.** The implication from the auditor is that there might somehow be something criminal described in paragraph 48. That decision ultimately rests with the State Attorney, upon receipt of the full audit and the full response.
- (64-65) **Paragraphs 50 and 51** are repeats of the information contained in paragraphs 36-44 of Audit 12356, dated June 23, 1994.
- (66) **Paragraph 52.** As further information in this regard, Audit 12356 identified a procedural weakness and recommended certain corrections. As a matter of record, as soon as the college was made aware of the concerns and recommendations, the college responded by fixing the procedural flaw in the way recommended by the auditor. The auditor also recommended that all payments made to BTR be reviewed to determine that no duplicate payments occurred. As a matter of record, BCC immediately did exactly what was recommended by the auditor, and reviewed all payments made to BTR. Because both halves of the payments were not to BTR, even that effort failed to uncover the duplicate payment problem. Therefore, this potentially criminal activity remained undiscovered through several state audits, independent CPA audits, and an internal audit.
- (68) **Paragraph 53.** As reported in paragraph 53, and as a matter of record, as soon as the amount of the loss was determined, the BCC Vice President for Business Affairs filed an insurance claim, and the BCC Vice President for Business Affairs, accompanied by the college general counsel, took all the documentation regarding the double billing to the state attorney.

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Paragraph 54 reports two more items as if they were “duplicate payments.” In the first case what was described by the auditor does not constitute a “duplicate payment.” The payments in question in this issue were made over a period of time to Dr. Stan Bates. Dr. Stan Bates is a distinguished chemist who works at the University of Florida, and he operates laboratories very similar in terms of equipment to BTR. (While Dr. Bates is a member of the FERF board, he is not a member of the BTR board, and all his services were performed for BTR.)

For an extended period of time, while the Labs building was under development and design, Dr. Bates assisted, advised, and counseled BTR regarding the labs project. Over that time he was paid \$10,000 for this consulting work. Some of the money came from various grants, which BTR had been awarded for the purpose of helping in the overall development of the Labs. Whatever portion of the \$10,000 was not paid by those grants was then paid from the annual budget allowance given by BCC to BTR.

When the bond issue was successfully consummated, a representative of the owner of the bonds advised the BTR business manager that BTR should search its records and identify, for reimbursement purposes from the bond proceeds, all development costs associated with that bond issue. It was through that initiative that the payments made to Dr. Bates were identified as being part of BTR’s costs associated with development of the building project. Therefore, all invoices from Dr. Bates were searched out, found, and submitted by BTR through the draw process to the bond trustee for reimbursement to BTR. This process is in no way akin to the events described in paragraph 52. This was not a “double payment,” but instead was a reimbursement.

As with the previous example, the inadvertent incident with the payment to Outlaw & Rice bore absolutely no similarity to the events described in paragraph 52.

In this instance, Outlaw & Rice was probably at fault for billing once through FERF and once through Barnett & Fronzak. It is assumed that this was an inadvertent error because Outlaw & Rice immediately notified the former FERF president that they had received the extra \$16,650. At that point Outlaw & Rice still had a lot of work to do for the project, and since the process of drawing funds through the draw process was very paperwork intensive, and since it was anticipated that the process to return the money would be equally bureaucratic, the former FERF president negotiated an arrangement with Outlaw & Rice whereby they would work off the credit. That was done and Outlaw & Rice did work off the credit. When the auditors asked for copies of the invoices showing where the credit had been worked off, the auditor must have assumed, from the one sentence description contained on those invoices, that the work performed by Outlaw & Rice in working off the credit did not benefit the project, and therefore should not have been paid from bond funds. However, as a follow up to this audit, Outlaw & Rice was asked to supply a more detailed explanation of that work. The response from Outlaw & Rice is attached as Exhibit FERF-7, and it explains how that work actually benefited the project, thereby justifying the use of the bond funds.

(71-72)

Paragraphs 55 and 56. The current FERF president has no information to contradict the internal audit report that was done by the BCC internal auditor. The current FERF president did receive a statement from the staff member who signed for the delivery that the sides of the shipping container were slatted and he could see that it was some kind of piece of big A/C equipment.

Also, the current FERF president has maintained constant communication with the agency that awarded the grant, and a representative from the grantor has stated in a letter which is Exhibit FERF-13, that since all the terms of the grant have now been met, the agency intends to close their file regarding this grant.

(74-75)

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Paragraphs 57 and 58. In paragraph 57, the auditor presents a list labeled “contributions.” The list contains 8 items and totals \$81,343.70. Then in paragraph 58, the auditor speculates that these contributions could form a basis for transactions being done at “less than arms length.” First, an analysis of the 8 items on the list.

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(74-75)
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Item #1 - FPPOA - \$10,000. FPPOA did not make any contribution to anyone, and the auditors were informed of that during the audit. The \$10,000 that the auditor labeled "contribution" was actually a refund of money, from FPPOA to FERF. The FPPOA drew \$20,000 down from the bond issue to be used to maintain the drainage ditches during the construction period. After the first cutting of the ditches, a less expensive way was found to do the work and the \$10,000 in question was returned to FERF, where it was subsequently used to pay other project-related expenses. Nowhere, under any definition of accounting, can the return of the \$10,000 from FPPOA to FERF be classified as a donation.

Item #2 - IRREI - \$7,300. This was a donation to FERF.

Item #3- Prager, McCarthy & Sealy - \$17,000. Prager, McCarthy & Sealy has responded that their contribution occurred two months after all services were completed, and their contribution was unsolicited by FERF. The response from Prager, McCarthy, and Sealy is attached as Exhibit FERF-8.

Item #4 - Ringhaver - \$15,000. FERF had no direct relationship with Ringhaver. The general contractor on the bond project called for bids from electrical subcontractors. The work to be bid included purchase and installation of an electric generator. Per the general contractor, the electrical contract was awarded to Service Electric Inc. because they submitted the low bid, and that low bid included the Ringhaver generator. Therefore, the generator was part of a low bid. The project ultimately issued a check in payment for the generator directly to Ringhaver because that was the process used throughout the project to save the sales tax on the material purchased. (In order to save the sales tax, all payments for goods bought through all subcontracts went directly from FERF to the vendor, based on the contractor's authorization to pay.)

In summary, FERF had no relationship with Ringhaver. Ringhaver was a subcontractor to a low bidder.

Item #5 - Robert Conner, Inc. - \$15,000. Per the general contractor, Robert Connor, Inc. was the low bidder to the general contractor for the sitework contract on the labs building. In addition, as noted by the auditor, Robert Connor, Inc. did a \$5,000 job on the ditches. Obviously, Robert Connor, Inc. did not donate \$15,000 in return for a \$5,000 job. Therefore, the main sitework contract, which would have to be the "problem" that the auditor is identifying in relation to the donation, was, per the general contractor, a bonafide low bid.

Item #6 - Tom Adams - \$11,643.70. Mr. Adams was president of FERF. Staff members at all levels, including most college trustees, donate money to the college through its DSO's. There is nothing inherently or legally wrong with any employee, officer, or director of a company supporting that company through a donation.

Item #7 - Mad Dog - \$5,000. This was a loan by Mad Dog to FERF and is evidenced by a properly executed promissory note.

Item #8 - RMA - \$400 Loan. The information regarding the RMA transaction was obtained from the former FERF president. He reported that the transfer of funds to FERF from RMA was done to close out RMA. RMA ceased actively doing business on March 31, 1994, and the \$400 was left in its checking account. Therefore, to close out the account, the money was transferred to FERF, and was classified as a donation when posted to FERF.

In summary, the information presented above presents a far different picture than that presented by the auditor. The \$10,000 from FPPOA was not a donation. The \$15,000 from Ringhaver and Robert Connor, Inc were low bids, and low bids are the antithesis of "lack of arms length." This is actually addressed in Chapter 112. Per Chapter 112, no conflict can exist when goods or services are obtained as low bids through competitive processes. One donation was from an officer of the company. And finally, one gift (from Prager, McCarthy & Sealy) was an unsolicited donation.

What does that leave???

- One donation, from IRREI for \$7,300
- One loan, still outstanding with a properly executed promissory note for \$5,000, and
- One \$400 transaction resulting from closing down a company.

Do these 3 remaining transactions; one \$7,300 contribution, one \$5,000 note, and one \$400 transaction justify the criticism leveled by the auditor in paragraph 58 which included that there could somehow be

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- (74-75) criminal conduct associated with all these donations? Perhaps, upon reviewing this response, the Auditor General will reevaluate this issue.
- (77) **Paragraph 59.** Nowhere is there known to be any existing statute which would require FERF to develop and maintain the documentation proposed by the auditor. The sale procedure will be covered in the answer to paragraph 62.
- (80) **Paragraph 62.** The vehicle title should have been transferred from FERF to the BCC Foundation, but that step in the process was inadvertently overlooked. However, all parties assumed that the BCC Foundation owned the vehicle. In response to the letter, written by the former FERF president to the BCC Foundation, the BCC Foundation did not approve the request and instead voted to sell the car. Each party (the former FERF president, and the BCC Foundation), obtained an appraisal and the car was sold by the BCC Foundation to the former FERF president for the average of the two appraisals.
- (81) **Paragraph 63.** Paragraph 63 generally re-discusses acquisition and disposition of the vehicle. The attached Exhibit FERF-1, clarifies the bidding issue in that bidding is not required even though disposition was done using a competitive process. As a matter of record, the former FERF president did personally contribute \$1,320 toward the monthly payments on the 1996 vehicle while the vehicle was owned by FERF.
- (82) **Paragraph 64.** In accordance with the response to paragraph 21, any such transaction, if it occurred now, would be done to the requirements itemized in paragraph 21.
- (84-86)
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Paragraphs 65-67. The specific travel being discussed throughout paragraphs 65-67 occurred during the period 12/94 - 6/95. The real question raised regarding this entire situation is did the former FERF president receive, and keep, the mileage reimbursements for use of the car? Since the car did not belong to the former FERF president, and since the costs to operate the vehicle were not being paid by the former FERF president, then the former FERF president should not have ended up with any mileage money from the use of the car.
- The car was owned by FERF. The car operating expenses were being paid by IRREI. Mileage was paid to the former FERF president, who then paid that mileage to IRREI. Unfortunately, when he was asked about this during the audit, he remembered incorrectly one detail. He thought that he was reimbursing FERF for the mileage and he so notified the auditor. The auditor then looked at FERF's records and could find no reimbursements. After the Preliminary and Tentative Audit Findings report came out, the investigation into this matter resumed because of the information in paragraphs 65-67 and the error in the response from the former FERF president was uncovered. Instead of reimbursing FERF, the former FERF president actually reimbursed IRREI for that mileage because IRREI was actually paying the vehicle operating expenses.
- Each travel questioned by the auditor was reimbursed in that way, and the 1994-95 check numbers, check amounts, and IRREI deposits individually corresponding to all travel reimbursement have been located. In summary, the former FERF president did not get and keep the mileage reimbursement and that can now be documented.
- (92) **Paragraph 72** is factually correct, and as a matter of record the resolution printed in the audit report is exactly what was passed by the BCC Board of Trustees.
- (93) **Paragraph 73.** Neither BCC nor any of its DSO's is responsible for what Moodys says. The resolution that was passed by the BCC Board and printed in the prospectus for the 1995 bond issue clearly delineated who was responsible for what. If Moodys reported something different in one of its publications, that is not the fault of BCC or its DSO's.

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Paragraph 75 is identical to paragraph 20 in that each paragraph quotes a piece of the same audit comment from the last BCC operational audit. As a matter of record, the full text is found in paragraphs 35-50 of Audit 13000 dated 5/28/97, and the full response is found on pages 39-53 of Audit 13000.

(100)

In **Paragraph 80**, the auditor presents an opinion that the issue cost of 20% is excessive. This question was independently researched and the bond counsel has responded with extensive documentation and a conclusion that those costs were not excessive. FERF had to rely on the opinion of the bond counsel. His opinion is different than the opinion of the Auditor General.

(103-104)

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Paragraphs 82 and 83 refer to questioned costs in general, and to the audit fees in particular. With respect to the issue, after receiving the Preliminary and Tentative Audit Findings, the college Vice President for Business Affairs asked the auditor to identify the appropriate authority for determining legitimate expenditures. The auditor's response was that the bond documents themselves are the authority. Therefore, attached is Exhibit FERF-9 from the bond documents. Exhibit FERF-9 contains language specifically delegating to the college Vice President for Business Affairs the final authority in this matter. It was the understanding of the college Vice President for Business Affairs that there was a specific process in place regarding project draws. That process, as reported to the BCC Vice President for Business Affairs was that all parties to the project (including FERF, BTR, A&E firms, general contractor, and project developer) met weekly at the job site to review the job and the draw information. Each item that was in the draw was agreed to through that process before becoming part of the draw request.

Once each month all approved items were assembled and submitted to the BCC Vice President for Business Affairs, who then reviewed each item and who accepted the items which were appropriate. The Vice President for Business Affairs then signed the draw cover letter and the draw request was now complete.

At that point, the draw request was copied in duplicate (copying did not include some of the voluminous backup attached to the FERF copy), a copy was sent to the trustee, a copy was kept in the files of BTR Labs, and the original, with all backup, was kept by FERF. Apparently, when FERF's office was moved from Palm Bay to Cocoa, two boxes of records were somehow lost in that move. Those two boxes contained the FERF copies of the draws, with a great deal of detailed backup attached which, due to its voluminous nature, was not copied with the BTR labs or trustee copies of the draw requests and therefore, is not available for inspection. A search is still underway for the misplaced records. During the construction process, FERF and BTR were both audited by independent CPA's, and those audits covered 7/1/94-6/30/95, and 7/1/95-6/30/96. Those audits therefore would have included all draws, and those auditors would have had available the FERF copy of the draw, with all backup, to use for that audit process. Those audits did not disclose any problems with the draws.

In summary, the process used to approve the draws was the process that was authorized in the bond documents, and the independent audits which were done when the full set of documents were available did not identify the problems cited by the auditor in this report.

It is unfortunate that those records are lost. However, unless instructed to do the contrary by higher authority, FERF does not believe that any money should be restored to the bond trustee.

In regard to the audit fees, Exhibit FERF-10 is a copy of the page from the bond documents which authorized payment of audit fees.

(109-110)

Paragraphs 87 and 88 discuss that various steps related to the bond process for the BTR building were done without bidding. That is true. However, Exhibit FERF-1 contains a legal opinion that no bidding was actually required, therefore, based on that legal opinion no violation of law actually exists. This is also consistent with the series of legal opinions contained in the bond documents themselves. Those opinions validate the process that was used by FERF.

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- (111) **Paragraph 89.** See response to paragraph 21.
- (115) **Paragraph 93** contains an assertion by the auditors that “no feasibility study or market survey were conducted...” The bond documents themselves controvert this assertion. Exhibit FERF-11 is the ten-year revenue and expense forecast which was done as part of the work behind the bond issue, and was part of the bond documents.
- (119) **Paragraph 96.** In response to paragraph 96, FERF did not attempt to get separate appraisals due to lack of funds. FERF has never had a budget from BCC for help in paying FERF operating expenses, and until May 1996, even the FERF employees had to be paid by funds generated externally by FERF. Therefore, at that time, appraisals were considered an unaffordable luxury to FERF. FERF did however rely on the appraisals that had been received by BCC for adjacent parcels, and since the price per acre obtained by FERF was thirty percent less than the per acre price of the adjacent BCC land, FERF assumed it had a reasonable basis to support its original purchase. Since the stated purpose of the original purchase was to help BCC control development of the lands surrounding the campus, FERF assumed that this met the intent of Florida Statute 240.331. (Had the college disagreed, FERF assumed that the college would have communicated that to FERF.)
- (120) **Paragraph 97.** All transactions itemized in paragraph 97 were correctly summarized except the transaction with the North Brevard Hospital District. The auditor reported that the price of that transaction was \$38,145.16 per acre. However, the actual price was \$43,260 per acre. At \$43,260 per acre, the corresponding value of the North Brevard land was sufficient to buy 8.747 acres of the bond land, but no parcels existed of exactly that size. Nothing in the bond documents allowed the bond land to be subdivided. Clear title to “bond” land could only be obtained by paying off the lots exactly as described in the bond document. The procedure required to actually buy 8.747 acres would have required getting unanimous approval of all bond holders to amend the bond document accordingly. The cost to do that process was estimated to be \$60,000 and there was no assurance that all bond holders would agree.
- Therefore, in order to actually complete the sale, additional land over and above the 8.747 acres, had to be included so as to equate to exact parcels. In order to consummate the transaction, BTR contributed \$50,739 so that enough additional land (1.17 acres) could be purchased to get to an exact group of land parcels as defined in the bond documents. The \$50,739 became a “prepaid” bond payment because by paying off \$50,739 of bonds early, which was the value of the extra 1.17 acres needed to be included, BTR would be relieved of that much of the obligation from then on.
- (122) **Paragraph 99** is correct, but possibly incomplete. While the land was in foreclosure during the audit, according to the college general counsel that foreclosure is now complete, and the lands identified in paragraph 99 have reverted to Atlantic Gulf Corporation. However, although FERF did lose title to all that land, FERF had been able to originally acquire that land without having to use any cash or convey any other corporate assets to AGC except the promissory note for the land.
- Therefore, since there is widespread belief that the 83.5 acres is currently worth less than the face value of the note, this is not a negative event for FERF in the economic sense.
- (124) **Paragraph 101.** FERF agrees with paragraph 101, and after considerable additional effort, FERF has recently received a contract offer to sell an additional 11.4 acres of the bond land. If that transaction is successfully completed, then of the original 40 extra acres of land in the bond issue, only one 17-acre block of land will still be left in the bond issue. FERF will continue to attempt to market that land.
- (126) **Paragraph 103.** In response to paragraph 103, and as stated earlier in this reply, although FERF has presented evidence to controvert the legal necessity of opening its meetings, the actual issue is moot, because all FERF board meetings are now noticed and open to the public.

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Exhibit FERF-1

JOE D. MATHENY
ATTORNEY AT LAW
355 INDIAN RIVER AVENUE
TITUSVILLE, FLORIDA
(407) 267-3733

FAX
(407) 267-3736

PLEASE REPLY TO:
P.O. BOX 6526
TITUSVILLE, FL 32782-6526

MEMORANDUM

**TO: BREVARD LABS
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.**

**FROM: JOE D. MATHENY, GENERAL COUNSEL TO BREVARD
COMMUNITY COLLEGE**

DATE: FEBRUARY 12, 1998

**RE: AUDITOR GENERAL'S SPECIAL AUDIT OF BREVARD
LABS AND FLORIDA EDUCATION AND RESEARCH
FOUNDATION**

The Auditor General, in the Special Audit (preliminary report) performed of Brevard Labs and Florida Education and Research Foundation, has condemned or criticized the direct-support board members in three (3) areas, in which the position of the Auditors is not completely consistent with existing Florida law. Those three (3) subjects are:

- (1) the applicability of the Florida and the Sunshine Law to direct-support organizations;
- (2) inadequate record-keeping and lack of competitive bidding for purchases by the direct-support organizations; and
- (3) suggested ethics violations by dual-board membership on the part of BCC administrative personnel.

Each of these areas bear scrutiny; and, at the request of the College administration, the undersigned submits the following as a summary of the present Florida law pertaining to these issues.

1. Applicability of the Florida Sunshine Law. It is uncertain, at the present time, whether or not the Florida Sunshine Law applies to the BCC direct-support organizations. The Auditor General has condemned direct-support actions taken as a criminal violation of the Sunshine Law; and, he bases this condemnation upon three (3) separate Attorney General's Opinions, neither of which apply directly to college direct-support organizations. Florida

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Exhibit FERF-1

Statute 240.331, which authorizes the existence of direct-support organizations, does not place these organizations under the Sunshine law; and, at the present time, there is no Court decision in the State of Florida that requires direct-support organizations to conduct public meetings. Brevard Community College, to my knowledge, is the first college in the State of Florida to publicly advertise its direct-support organizations and conduct them in the Sunshine. There have been no charges filed or claim of violation against any college direct-support organization or any individual member of any such organization in this State; and, in the opinion of this writer, it is unlikely that any charges will be filed as a result of the Attorney General's Opinion, because it is, at best, speculative as to whether the Sunshine Law applies to college direct-support organizations. As a matter of fact, the enabling statutory law exempts most of the public records of the direct-support organizations. The Legislature, having mentioned the Public Records, could have also provided for the applicability of the Sunshine Amendment, but chose not to do so.

A brief review of the three (3) Attorney General's Opinions relied upon by the Auditors create even more uncertainty as to the applicability of the law.

1. AGO 94-32 suggests that the Florida Windstorm Underwriting Association is subject to the Sunshine Amendment. The statute which created this organization subjects the Board of Directors of the organization to the supervision of the Insurance Commissioner; and, it is obvious that this board does not have the autonomy of a college direct-support organization.

2. AGO 92-80 suggests that the Board of Directors of Enterprise Florida, Inc., is subject to the Sunshine Law. This board was created by a statute, and the board members are appointed by public officials, and the powers and duties are prescribed by statute. The structure of this organization is completely different than the community college direct-support organizations.

3. AGO 92-53 suggests that the Ringling Museum of Art Foundation, Inc., a direct-support organization of the Ringling Museum of Art, is subject to the Sunshine Amendment. The purpose of the Museum is to maintain and preserve art objects and artifacts donated to the State of Florida; and, the purpose of the DSO appears to be the same, except that it is charged with raising money to assist its parent organization. In the Ringling situation, the parent organization maintains all of the funds, has a written contract with its DSO, is required to approve the Articles of Incorporation, the budget, and the property of the DSO becomes the property of the Museum after a period of three (3) years. The structure of the Museum, as well as the supporting DSO,

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
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Exhibit FERF-1

is entirely different from the BCC DSO structure, and it creates serious reservation as to whether the Attorney General's Opinion relating to the Museum would apply to the College and its DSOs.

While the Attorney General's Opinions are persuasive, they are not controlling. Until such time as there is a judicial interpretation or an amendment to the Florida Statute, there remains some uncertainty as to the applicability of the Sunshine Amendment. While the Auditor General may elect to give the Attorney General's Opinions the force and effect of law, that position is not binding upon, or necessarily the position of, Brevard Community College. Out of an abundance of precaution, the College has, for approximately one and one-half years (1-1/2), publicly noticed its DSO meetings and will continue to do so in the future, until there is a more definitive law or court decision on the issue. However, the Auditor General is in error to condemn as criminal activity the meetings held by the College DSOs without public notice. This position taken by Auditor General impacts all 28 community colleges and all direct-support organizations that exist at each college. To give the Auditor General's position the effect of law would be to dictate wholesale legislative finality to all direct-support organizations across the State of Florida. Why have the Auditors failed to obtain a specific Attorney General Opinion prior to accusations of violation of law? Accordingly, I do not believe the condemnation in the Auditor General's Special Report should be accepted and should form the basis a subsequent determination of all of the actions taken by the College DSOs are void or voidable or unenforceable. It is the substance of the action taken by the direct-support organization that is significant; and, whether or not such action was in the best interest of the College and consistent with the purpose of the organization. To condemn direct-support action because of what the Auditors call "a violation of the Sunshine Amendment" is improper; and, the Auditors, themselves, deserve condemnation for having failed to recognize that the Florida law has not definitively resolved the question.

Florida Statute 286.011 specifically provides that "all meetings of any board or commission of any state agency or authority, or any agency authority of any county, municipal, corporation or political subdivision . . . at which official acts are to be taken or declared to be public meetings and open to the public at all times . . ." This statute clearly does not incorporate a direct-support organization of a community college; and, while it may be a policy that the BCC Board would adopt to treat its direct-support organizations as subject to the Sunshine Law, or until there is a judicial or statutory direction, the law must remain unsettled.

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
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Exhibit FERF-1

2. Competitive Bidding and Record-keeping Requirements.

(a) Competitive Bidding. Direct-support organizations are not generally subject to competitive bidding requirements. When the construction of the Brevard Labs' facility was under consideration, the question was raised whether competitive bidding was required, as well as competitive selection of architects, engineers, financial consultants, attorneys, and other professionals. This question was answered by the Bond Counsel and all of the professionals associated with the Bond Issue; and, it was determined that the competitive bidding and competitive selection of these professionals was not required because the organization involved in the process was a direct-support organization, and not the College, itself. Simply because competitive bidding is required by the College does not transfer this requirement to a direct-support organization; and, there is no legal requirement for competitive bidding. It should be noted, however, that in instances where equipment was purchased in the name of the College and placed in the College's name, competitive bidding was required. This requirement was noted in the regular Audit of the College in the year 1993; and, the College accepted that recommendation and changed the method by which it purchased equipment, and now follows the competitive bidding process for all purchases, regardless of whether it is through a DSO, a contractor, or other individual or other organizations. The Auditors in the Special Audit have condemned the College and its DSOs for allowing the equipment to be purchased, as well as construction to take place, as well as the selection of professionals to occur. This condemnation is no more than a historical summary of what the College has received from the prior Audits. The College is undeserving of double condemnation for items that have been long-since corrected and put to rest.

It is interesting to note that even the Attorney General, who opined that Enterprise Florida was subject to the Sunshine Act, in the opinion stated that the organization was not subject to the competitive bidding statutes. This opinion was predicated on the fact that Florida Enterprise was not a "state agency" under the statute. In the present instance, neither was Florida Education and Research Foundation or Brevard Labs. Accordingly, in instances where the Auditors have condemned the College DSOs for not seeking competitive bids for the construction of the Labs, as well as the purchases by the DSOs is unjust and unfair. Except in instances where the equipment was purchased in the name of the College, and, in that case, where the purchases were over the \$10,000.00 bid limit, the College has already responded to a prior audit on the same subject and with the same admonishment.

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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Exhibit FERF-1

(b) Record-keeping. While direct-support organizations must keep records of transactions, there is no legal requirements that these records and, for that matter, the business affairs of the direct-support organizations be managed with the sophistication of college-managed business or college record-keeping procedures. The stringent tests suggested by the auditors is that all of the business affairs of the direct-support organization should be according to the same standards as is imposed upon the College by law. There is no such legal requirement; and, until such time as the Legislature or the College Board sees fit to establish stringent record-keeping standards equivalent to the requirements of the State Board of Education and the Florida law, then, the business records of the direct-support organizations need not be maintained except in a reasonable fashion for examination by the annual independent auditors and any special or state audit. It is interesting to note that the annual auditors have not raised any significant complaint as to the availability of records for them to complete their audit and have not questioned the system of record-keeping and conduct of business by the direct-support organizations, albeit that such systems are not as sophisticated as the mandated systems for the College. The logical reason for this is that the budget of the two (2) institutions are not comparable; and, the special auditors, to some extent, in their preliminary audit report have failed to recognize the difference between the direct-support organizations and the community college in this regard.

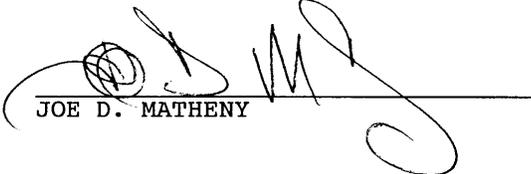
3. Dual-Board Membership. Throughout the Special Audit, the Auditors have criticized transactions identified as related party transactions, in which there are shared board members, officers, or employees. Examples are where the College DSOs contracted with organizations having board members on both boards. There is a substantial discussion of the applicability of the Florida Code of Ethics; and, the Audit goes into great detail as to the transactions between FERF and ERIE and RMA (private corporations). The Auditor recognizes that the Code of Ethics does not apply to officers and employees of the not-for-profit corporations, but does, in fact, apply to the officers and employees of Brevard Community College. With the single exception of the Special Assistant to the President of BCC, none of the employees or officers of BCC, who may have served on the direct-support organizations were officers or employees or directors of any related party organization other than the College. The Auditor's condemnation of related-party transactions is presented as a universal condemnation of all of those who may have served on the direct-support organization, when, in fact, only one (1) single employee of the College had multiple board membership. The legal question, then, surfaces whether or not it is an ethical problem, a conflict of interest, or a violation of dual-office holding, or

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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Exhibit FERF-1

the like, for college administrators, or other college employees, including board members, to serve as members of direct-support organizations. It is clearly no conflict of interest, per se, for any college board member or employee or the college attorney to serve as a member of a direct-support organization. In fact, it is important for the College to have knowledgeable representatives on the boards of its direct-support organization for purposes of control and reporting to the College Board. Current law (F.S. 240.331) authorizes the College to provide support personnel. In the legislation proposed by Senator Kurth relating to direct-support organizations, there is a requirement that the president of the college, as well as a board member, serve on each direct-support organization. The College has been practicing this since the inception of the direct-support organizations; and, college employees, including the College Vice President for Business Affairs, the College Attorney, other college administrators, have regularly served on the DSOs for the protection of the College Board and the College community; and, this practice is laudable, not condemnable.

In summary, the condemnation by the Auditors should not be universally applied to all college employees, but should be viewed as a condemnation of a single part-time college employee who has long-since been terminated, and policies put into place where the related-party transaction problem should not surface in the future. There are always isolated instances where a board member of a DSO, or even a board member of the College, may have an individual conflict of interest, but, generally speaking, it is important for the College to have serious representation on its DSOs. To the extent that the Auditors condemned the College because of the membership of the administrators or College board members as DSO members, the Audit Report is improper; and, the Auditors should focus on the actions taken by the Boards and by the individual members and not condemn the structure of the organizations.



JOE D. MATHENY

cc Michael Mattimore, Esquire
Office of the District President, BCC

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
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Exhibit FERF-2

FLORIDA EDUCATION &
REDEVELOPMENT FOUNDATION

February 18, 1998

Steve Megregian
Vice President of Business Affairs
Brevard Community College
1519 Clearlake Road
Cocoa, Florida 32922

Dear Steve:

On Page 22 of the "Preliminary and Tentative Audit Findings" produced by the Auditor General, there are numerous references to interrelated dealings between entities which seem to imply the possibility of conflicts of interest. Of those contracts of which I was a part, the only possible conflict I can think of relates to the contract between Florida Education and Research Foundation, Inc. and Indian River Regional Environmental Institute, Inc., since I was president of both these not-for-profit corporations.

Anticipating the conflict of interest issue, before this contract was signed the Board of Directors of F.E.R.F. took action to approve the contract, from which action I abstained.

Attached you will find a copy of the minutes of the meeting. The original should be found in the F.E.R.F. minute book.

Hopefully, the foregoing will answer the concern of the Auditor General.

Should there be further questions, please let me know.

Sincerely,



Tom Adams

attachments

P. O. Box 100280, Palm Bay, FL 32910-0280 • 407-632-1111 ext. 22071 • Fax 407-634-3742

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

Exhibit FERF-2

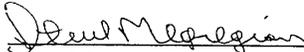
ACTION BY UNANIMOUS WRITTEN
CONSENT AUTHORIZING CONTRACT FOR SERVICES
BY THE BOARD OF DIRECTORS OF THE
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.

HEREBY, the undersigned Board of Directors consents to the entering into contract for services between Florida Education and Research Foundation, Inc. and Indian River Region Environmental Institute, Inc. The contract shall become effective on the date it is signed by the vice-president of Florida Education and Research Foundation, Inc. It shall remain effective for one year from this date, and shall be renewed on a yearly basis after a comprehensive review by all board members of Florida Education and Research Foundation, Inc. A copy of the contract is attached to this resolution.

FURTHERMORE, the board acknowledges the full disclosure of Tom Adams as both a member of the Board of Directors of Florida Education and Research Foundation, Inc. and Indian River Region Environmental Institute, Inc. The board duly notes all conflicts of interest that may exist now or in the future, but still consents to this contract.

IN ADDITION, due to the potential conflict of interest, Tom Adams withdraws from making any decisions on this issue and the four remaining board members agree to this contract.

IN WITNESS WHEREOF, the undersigned have duly executed this consent on February 17, 1995.



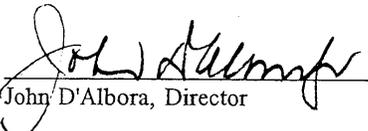
Steve Megregian, Director



Stan Bates, Director



Robert Nanni, Director



John D'Albora, Director

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

Exhibit FERF-3

FLORIDA EDUCATION &
REDEVELOPMENT FOUNDATION

February 18, 1998

Steve Megregain
Vice President of Business Affairs
Brevard Community College
1519 Clearlake Road
Cocoa, Florida 32922

Dear Steve:

On page 20 of the "Preliminary and Tentative Audit Findings" of the Auditor General it is stated as follows:

"On October 22, 1992, the I.R.R.E.I. Board of Directors resolved to compensate the President of I.R.R.E.I. (who was also President of F.E.R.F. at the time) at \$50,000 per year for services previously rendered in "fiscal years 1990 and 1991 without receiving any compensation".

Please be assured that there were no payments pursuant to the resolutions. I have asked my accountants, who have handled my tax returns for many years, to confirm this. Their letter is attached hereto.

Should there be further questions I can answer, please let me know.

Sincerely,



Tom Adams

attachment

P. O. Box 100280, Palm Bay, FL 32910-0280 • 407-632-1111 ext. 22071 • Fax 407-634-3742

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
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Exhibit FERF-3

BEN F. BETTS, JR., C.P.A.
EDGAR A. ROGERS, JR., C.P.A.
JOSEPH T. SCHENCK, C.P.A.
MARK J. JONES, C.P.A.

BETTS, ROGERS, SCHENCK & JONES
CERTIFIED PUBLIC ACCOUNTANTS
PROFESSIONAL ASSOCIATION

MEMBERS
PRIVATE COMPANIES
PRACTICE SECTION OF THE
AMERICAN INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS
FLORIDA INSTITUTE OF CERTIFIED
PUBLIC ACCOUNTANTS

February 18, 1998

Mr. Tom Adams
P.O. Box 100280
Palm Bay, FL 32910-0280

Re: Wages from Indian River Region Environmental Institute, Inc.

Dear Mr. Adams:

I reviewed your Internal Revenue Service Form 1040, U.S. Individual Income Tax Return, for the years 1990, 1991, 1992 and 1993. The following lists the amount of gross wages you received from Indian River Region Environmental Institute, Inc. per the Form W-2s that were filed with your tax returns for these years.

1990	\$	0.00
1991	\$	0.00
1992	\$	0.00
1993		<u>\$16,346.84</u>
Total		<u>\$16,346.84</u>

If we need to make copies of the tax returns for these years or any backup materials, please let me know.

Sincerely,



Rodney E. Reams

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

Exhibit FERF-4

DAMAGE REPORT
 12/12/95 at 10:05
 FL REG # NV-04481

ADAMS
 D.R. 12919-0000887
 Est: B. PARSONS

NISSEN'S BODY SHOP, INC.
 MERRY CHRISTMAS & HAPPY NEW YEAR!
 1901 DANR DR. N.E.
 PALM BAY, FL 32905-
 (407) 727-1833

Owner: TOM ADAMS
 Address:

Day Phone: (407) 724-8009-
 Other Ph: () - -
 Deductible: \$ N/A

Insurance Co.:
 Claim No.:

Phone:
 Adj.:

Vin: 1FMDU34X5TUA38377 License:

Prod Date: 0/ 0 Odometer: 0

NO.	REPR/ REPL	DESCRIPTION OF DAMAGE	QTY	PART COST	LABOR	PAINT	MISC
1*	Repl	RT FRONT DOOR SIDE MLD	1	49.02	0.5	0.0	
2*	Repl	RT RR DOOR MLD	1	39.03	0.3	0.0	
3*	Repr	RT RR DOOR	1	0.00	2.0	2.4	
4*	Repr	RT QTR PANEL	1	0.00	0.5	2.0	
5*		CLEAR COAT	1	0.00	0.0	1.4	T 0.00
Subtotals ==>				88.05	3.3	5.8	0.00

PARSONS ORDERS
 12-12-95

Page: 1

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
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STATEMENTS FROM AUDITED OFFICIALS
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Exhibit FERF-4

AMIGO REPORT
 12/17/95 at 10:05
 PL FILE # MV-04481

ADAMS
 D.R. 12919-0000887
 Est: B. PARSONS

NISSAN'S BODY SHOP, INC.
 MERRY CHRISTMAS & HAPPY NEW YEAR!
 1901 DANR DR. N.E.
 PALM BAY, FL 32905-
 (407) 727-1833

Parts		88.05
Labor	3.3 units @ \$30.00	99.00
Paint	5.8 units @ \$30.00	174.00
Paint/Materials	5.8 units @ \$15.00	87.00

SUBTOTAL		\$ 448.05
Tax on \$	448.05 at 6.0000%	26.88

GRAND TOTAL		\$ 474.93

INSURANCE PAYS		474.93

Pd. Visa
1/9/96

THIS IS AN ESTIMATE ONLY. SOMETIMES HIDDEN DAMAGE MAY BE FOUND AFTER TEAR DOWN. PARTS PRICES ARE SUBJECT TO INVOICE. NO GUARANTEE ON
 JUST REPAIRS. I AUTHORIZE NISSAN'S BODY SHOP TO MAKE THE ABOVE REPAIRS. SIGNED _____ DATE _____

Estimate based on MOTOR CRASH ESTIMATING GUIDE. Non-asterisk(*) items are derived from the Guide. Database Date 0/0
 Double asterisk(**) items indicate part supplied by a supplier other than the original equipment manufacturer.
 CAPA items have been certified for fit and finish by the Certified Auto Parts Association.
 EZEst - A product of CCC Information Services Inc.

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
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STATEMENTS FROM AUDITED OFFICIALS
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Exhibit FERF-4

		BARTOW FORD COMPANY 425 E. Van Fleet Drive — P.O. Box 1700 BARTOW, FLORIDA 33830 Phone (813) 563-0425				DEAL # 2038	
		9-15-95					
09/11/95		FL EDUC & RSRCH FOUND. INC PO BOX 2389 MELBOURNE FL 32902 (407)724-8009				INVOICE NO. 130764	
UST. NO. 13294	STOCK NO. T5534	YEAR - MAKE 96 FORD TRUCK	MODEL EXPLORER XLT	<input checked="" type="checkbox"/> NEW <input type="checkbox"/> USED <input type="checkbox"/> DEMO <input type="checkbox"/> RNT	SERIAL NO. 1FMDU34X5TUA30377	KEY NO.	SALESMAN PHIL HAMIL
BUG DEFLECTOR 149.00 PROTECTION PKGE 399.00			PRICE OF CAR 28728.00 LEAD ACID BATTERY FEE N/A WASTE TIRE FEE 1.50 ADMIN. FEE 5.00 176.00 SUBTOTAL 29921.50 SALES TAX N/A CASH PRICE N/A 29920.50 MVWEA FEE 2.00 LICENSE AND TITLE 100.00 TOTAL 29922.50				
EMO 7 TRADE IN FORD TRUCK EXPLORER 1FMDU34X3RUE19959 17000.00 1/2 OFF TRADE ALLOWANCE 19072.16 BARNETT BANK P.O. BOX 2759 JACKSONVILLE FL 32203-2759 DATED 09/18/95 \$30000.00			SETTLEMENT: DEPOSIT CASH ON DELIVERY N/A USED CAR: 1994.96 TYPE -2972.16 SERIAL NO. ENGINE NO. PAYMENTS: CASH BALANCE DUE				
ALWAYS SHOW SERIAL, ENGINE AND KEY NUMBERS							

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

Exhibit FERF-5



Reply to:

January 21, 1998

Indian River Region Environmental Institute
Attn: Mr. Tom Adams, President
P.O. Box 100280
Palm Bay FL 32910

Dear Tom:

This letter is an attempt to bring to closure an issue raised by the Auditor General's office during the course of the audit on Florida Educational Research Foundation and BTR Labs.

On August 17, 1993 Brevard Community College (BCC) issued check number 97098 to Indian River Region Environmental Institute (IRREI) in the amount of \$37,600. The documents attached to the invoice from IRREI indicated this payment was to reimburse IRREI for some "probes" purchased from a company called Bruker Industries, Inc. These probes were an upgraded attachment to the NMR Spectrometer.

The auditors were unable to find any evidence that IRREI made any payment to Bruker Industries, Inc. in this amount.

Please provide evidence that payment was made to Bruker Industries, Inc. In the absence of such documentation, please refund to BCC the \$37,600 paid to IRREI.

Regards,

Richard A. Becker

Richard A. Becker
Associate Vice President, Accounting and Finance

Cc: Dr. Maxwell C. King
Mr. Steve Megregian ✓
Dr. Tace Crouse

TITUSVILLE CAMPUS 1311 North U.S. 1 Titusville, Florida 32796 (407) 632-1111 FAX: (407) 634-3723	COCOA CAMPUS 1519 Clearlake Road Cocoa, Florida 32922 (407) 632-1111 FAX: (407) 633-4565	MELBOURNE CAMPUS 3865 N. Wickham Road Melbourne, Florida 32935 (407) 632-1111 FAX: (407) 632-1111, ext. 33299	PALMBAY CAMPUS 250 Community College Pkwy. Palm Bay, Florida 32909 (407) 632-1111 FAX: (407) 632-1111, ext. 22666	PATRICK CENTER 1020 Central Avenue, G-2 PAFB, Florida 32925 (407) 784-1911 FAX: (407) 784-1945
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EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

Exhibit FERF-6

FLORIDA EDUCATION &
REDEVELOPMENT FOUNDATION

February 23, 1998

Richard A. Becker
Associated Vice President
Brevard Community College
1519 Clearlake Road
Cocoa, Florida 32922

Dear Dick:

Thank you for your letter of January 21, 1998 relative to the Bruker Industries, Inc. invoice in the amount of \$37,600.00. The circumstances surrounding this invoice are unfortunate so allow me to respond as follows:

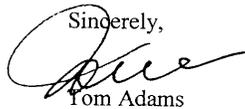
- a. I.R.R.E.I. should not have been billed for the two probes since the N.M.R. into which they were to be installed was properly the property of Brevard Community College.
- b. The invoice should not have been paid to Bruker by anyone because it was my understanding that the price of the two probes was included in the negotiated cost of the instrument exchange.

Even though I was president of I.R.R.E.I. at the time these events occurred, I had no personal knowledge of either the I.R.R.E.I. invoice to B.C.C. or the payment of the \$37,600.00 to I.R.R.E.I.

At the present time, I.R.R.E.I. does not have sufficient funds available to make an immediate refund to B.C.C. Therefore, in response to your letter I would be willing to personally guarantee a note from I.R.R.E.I. to B.C.C. in the amount of \$37,600.00. Let me suggest that the note be due two years, ^{from date and} ~~from date and~~ to draw interest at the rate of 6% per annum.

Should the foregoing be acceptable, please prepare the note and I shall promptly execute the same.

With warmest regards,

Sincerely,

Tom Adams

P. O. Box 100280, Palm Bay, FL 32910-0280 • 407-632-1111 ext. 22071 • Fax 407-634-3742

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

Exhibit FERF-7



OUTLAW, RICE, SOYKA & SWEENEY, INC.
Consulting Engineers • Planners • Land Surveyors

BEVILLE S. OUTLAW, P.E., R.L.S.
JOHN B. RICE, P.E.
MATTHEW A. SOYKA, P.E.
MICHAEL J. SWEENEY, R.L.S.

1222 North Harbor City Boulevard • Melbourne, Florida 32935
Mailing Address: P.O. Drawer 1299 • Melbourne, Florida 32902
(407) 254-9721 • FAX (407) 242-7854

February 23, 1998

Stephen J. Megregian
Vice President for Financial Affairs
Brevard Community College
1519 Clearlake Road
Cocoa, FL 32922

Re: BTR Labs

Dear Mr. Megregian:

In response to your letter of February 12, 1998 requesting an explanation of services provided under our invoice numbers 1042, 4819 and 4891 as they may relate to the BTR Labs building project or any of the 44 acres of land purchased as part of the bond issue, listed below the explanations are given for each of the mentioned invoices.

1. **Invoice #1042:** The Florida State Department of Transportation has determined that the intersection of Babcock Street and Community College Parkway is to be closed. The parkway is to be re-routed to intersect Foundation Park Boulevard. Treeland Boulevard intersects Community College Parkway and both of these thoroughfares pass through the 44 acres of bond land. To achieve the re-routing of Community College Parkway and effect its intersection to Foundation Park Boulevard, the stormwater drainage systems for this portion of Foundation Park had to be re-designed. The re-routing of Community College Parkway to intersect Foundation Park Boulevard mandated the widening of Foundation Park Boulevard. The widening of Foundation Park Boulevard and the re-routing of Community College Parkway mandated the re-design of the stormwater drainage system.

2. **Invoice #4891:** The drainage program in place for the Foundation Park area flowed east from the land bridge south of the BTR Labs building and west from this same land bridge. To increase the water storage of those areas adjacent to the BTR Labs building and the 44 acres, we were asked to re-design those areas. As a result of this re-design we were able to:

A. Increase water storage by 1/4 and prevent anticipated flooding.

INVESTIGATIONS • STUDIES • REPORTS • DESIGNS • PLANS • CONSTRUCTION MANAGEMENT

water and wastewater systems • streets and highways • drainage and stormwater management • environmental assessments • permit applications
surveys and mapping • land and site planning • zoning applications • subdivisions • site and project development plans

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

Exhibit FERF-7

Brevard Community College
February 23, 1998

Page 2

- B. Join the two drainage systems together through the land bridge so that all drainage could move either east or west.
 - C. Provide a source of sprinkler water for the BTR Labs building or other structures which might be constructed on the 44 acres.
 - D. Eliminate the considerable maintenance of the shallow water storage areas adjacent to the BTR Labs building and the 44-acre parcel. The deeper water prevented the growth of vegetation.
3. **Invoice #4819:** In anticipation of and to make effective the work to be accomplished as described in item #2 above, it was essential to re-design the drainage system west of San Fillippo. This re-design made it possible that in periods of flooding for all of the water in the storage areas east of San Fillippo to move west without this re-design the work accomplished and described in item 2 above would have been largely useless. This increased flow of water from those areas adjacent to the BTR Labs building and the 44 acres not only prevented flowing, but also made it unnecessary for the dedication of water improvement areas on the plants of the 44 acres, thus saving much valuable buildable acreage.

If you have any further questions, please contact me.

Sincerely,

OUTLAW, RICE, SOYKA & SWEENEY, INC.



Beville S. Outlaw, P.E.
President

BSO:nch

OUTLAW, RICE, SOYKA & SWEENEY, INC., MELBOURNE, FLORIDA

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
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Exhibit FERF-8

PRAGER, MCCARTHY & SEALY

INVESTMENT BANKERS

February 18, 1998

Mr. Steve Megregian
Brevard Community College
1519 Clearlake Road
Cocoa, FL 32922-6597

Dear Steve:

On the behalf of Prager, McCarthy & Sealy ("PM&S") I would like to clarify the reason behind PM&S's donation in the name of the Florida Education and Research Foundation ("FERF") in the amount of \$17,000. This donation was given to FERF in early June of 1995, subsequent to our firm's role in the structuring and underwriting of tax-exempt bonds issued by the City of Palm Bay, with proceeds of the bonds loaned to FERF.

Our donation was an unsolicited donation, given by our firm to FERF due to our strong belief in the role of FERF's role in assisting Brevard Community College in economic development and educational pursuits. No one at FERF, Brevard Community College, or Brevard Labs ever asked us for any donation, nor had any idea that we would make such donation to FERF. Our donation was made almost two months after the issuance of the Series 1995 Bonds by the City of Palm Bay, and as you will recall, this refinancing provided significant debt service savings to FERF and its Brevard Labs project.

We remain committed to Brevard Community College and believe strongly in the creativity and determination of Brevard Community College and its district support organizations in meeting its educational and economic development goals.

Sincerely,
PRAGER, MCCARTHY & SEALY


Ann R. Eppinger
Managing Director

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
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Exhibit FERF-9

Section 5.02 - Right of Entry.

In order to enable the Lessor to carry out the terms of this Lease Agreement, to provide for the acquisition, construction and installation of the Project and to facilitate the exercise of remedies upon an Event of Default hereunder, the Lessee hereby grants a right of entry to the Lessor, its agents and assignees, including, without limitation, the Trustee, at reasonable times, to the Project. The Lessee represents that it is empowered to grant such right of entry to the Lessor and the Trustee.

Section 5.03 - Acquisition and Construction of the Project.

(a) The Lessor shall provide for the acquisition, construction and installation of the Project, pursuant to applicable State law, Section 5.08 hereof and the Loan Agreement. Except as provided in Section 2.04(c) hereof, Title to the Project shall be in the name of the Lessor. The Trustee shall establish a Construction Fund for the Project leased hereunder in accordance with the Indenture. Amounts on deposit in the Construction Fund held by the Trustee pursuant to the Indenture shall be disbursed by the Trustee to the Lessor or the Person designated by the Lessor to pay Costs of the Project in accordance with the Indenture. Such disbursements shall be made pursuant to Requisitions which have been approved by the Vice President of the College and submitted by the Lessor to the Trustee in accordance with the procedures set forth in the Indenture. Such Requisitions shall be in the form set forth as Exhibit E hereto and shall be accompanied by such further documentation as set forth herein and in Section 5.2 (b) of the Indenture. The Lessee hereby agrees that the Lessor may be reimbursed for expenditures of moneys made by the Lessor for Costs in anticipation of the issuance of the Bonds to fund such Costs by filing Requisitions, with the documentation required by Section 5.2 of the Indenture.

(b) The Lessor and the Lessee agree that they will assure that the Project will be acquired, constructed and installed in accordance with the Plans and Specifications together with all applicable requirements imposed by the State of Florida Uniform Building Code for Educational Facilities and any other rules of the State Board of Education. The Lessor and the Lessee further agree that the Project will be acquired, constructed and installed in accordance with the Project Budget and the Project Schedule relating thereto, which shall be provided in the Schedule B attached hereto. The Lessor may, at any time prior to the Estimated Completion Date for the Project, make modifications to the Project and substitute items or components constituting a portion of the Project, subject to the provisions of this Section 5.03(b), if (i) the Lessor files with the Trustee a certificate of an Authorized Officer of the Lessor notifying the Trustee of such modification, addition or substitution, identifying the portion of the Project which is modified, added or substituted, and certifying that after such modification, addition or substitution, amounts on deposit in the subaccount of the Construction Fund relating to the Project, together with interest earnings thereon and any additional legally available sums of the Lessee deposited therein, will be sufficient to pay all remaining Costs of the Project, including Project Costs incurred in connection with such modification, addition or substitution and any Project Costs which shall have accrued but remain unpaid as of such date, (ii) the Plans and Specifications, the Project Description, the Project Budget and the Project Schedule for such amended or modified Project are each amended, as necessary, to take into account the portion of the Project which is modified, added or substituted, (iii) title to the substituted, added or modified portion of the Project shall be in the name of the Lessor, and (iv) no change shall be made in the schedule of Basic Rent payments. If the total Costs of the Project exceed the amount estimated therefor, the Lessor shall take the actions set forth in Section 5.05 hereof as a condition precedent to such modification, addition or substitution.

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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Exhibit FERF-9

(c) For purposes of this Lease Agreement, all materials and services in respect of which amounts are paid by the Lessor for the acquisition, construction and installation of the Project (including moneys disbursed by the Trustee pursuant to the Indenture including Costs of Issuance) shall be deemed accepted by the Lessee hereunder upon execution of this Lease Agreement and the Lessee shall thereby be deemed to have agreed that it has received valuable consideration for the portion of the Basic Rent representing Costs of Issuance and will pay the Lease Payments in respect of same. The provisions of this Section 5.03(c) shall not in any way limit or affect the Lessor's or the Lessee's rights to pursue warranty or other claims arising therefrom against any contractor, vendor or supplier of labor or materials of the Project, or any portion thereof. Execution by the Lessor and Vice President of the College of a Requisition shall constitute full approval and acceptance by Lessor and Lessee of the items or portions of the Project identified therein for all purposes hereunder.

(d) The Lessor and the Lessee further agree to assure that, where applicable, the Contractors and Developers of the Project involving construction of a building carry appropriate performance bonds, agree to liquidated damages on a daily basis for construction and delivery delays and comply with workers' compensation laws and affirmative action standards of the Lessee and the College; provided, however, that this provision shall not apply to any contract the total payments on which do not exceed \$100,000. Proceeds of liquidated damages received by the Lessor or the Lessee shall be deposited, before the Completion Date, into the Construction Fund and, after the Completion Date, into the Interest Account to be held for Basic Rent payments; provided, however, that if liquidated damages are to be imposed through withholding payment from the Contractors, then the Lessee shall direct the Trustee to withdraw from the Construction Fund an amount equal to said liquidated damages and to deposit such amount in the Interest Account.

(e) The Estimated Completion Date of the Project may be extended for a period of greater than six months only if the Trustee shall receive an opinion of Bond Counsel that such extension will not cause the interest on the Series 1994A Bonds to become includible in gross income of the recipients thereof for the purpose of federal income taxation. The Lessee shall take possession of the Project, or portion thereof, upon delivery and acceptance and, where applicable, substantial completion of installation thereof. No delay in the completion of the Project, or any portion thereof, nor any extension of the Estimated Completion Date as permitted herein shall relieve the Lessee of its obligation to pay the Lease Payments to the extent provided herein.

(f) The Lessor and the Lessee shall at all times keep title to the Project and their respective interests hereunder, free and clear of all liens and encumbrances of every kind whatsoever, except Permitted Encumbrances.

Section 5.04 - Payment of Costs of Issuance.

Payment of Costs of Issuance for the Bonds shall be made pursuant to Requisitions from moneys deposited with the Trustee in the Expense Fund. Costs of Issuance shall be disbursed in accordance with and upon compliance with Section 5.2 of the Indenture.

Section 5.05 - Limitations on Acquisition and Construction.

The amount of moneys available under the Indenture to pay for Project Costs and Costs of Issuance for the Project is limited to an aggregate dollar amount of not more than the Guaranteed Maximum Cost provided in Schedule B for the Project. If the Lessee agrees to an increase in the cost with respect to any portion of the Project or there is a cost overrun as a result of a substitution or

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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Exhibit FERF-10

"College Revenues" means all fees, revenues and income received by the Lessee from the College with respect to the College's students matriculating to and attending classes offered by the College at facilities owned and operated by the Lessee, and all amounts appropriated and budgeted by the College for the Lessee.

"Commencement Date" means the date set forth in Schedule B.

"Construction Contract" means a contract entered into between the Lessor on behalf of the Lessee and the Contractor or Developer providing for the terms upon which the Contractor or Developer shall construct and install the Project, or portion thereof.

"Contractor" means the Person or Persons appointed by the Lessor on behalf of the Lessee to act in such capacity.

"Contract Revenues" means all income and moneys received by the Lessee, or the College on behalf of the Lessee, from the rates, fees, charges, rentals and other income to be made and collected by the Lessee or accruing to the Lessee for the use of the products, services and facilities to be provided by the Lessee other than the direct cost of performing the services to be performed with respect to use of such products, services and facilities.

"Costs of Issuance" means all costs and expenses related to the execution, sale and delivery of the Bonds, including, but not limited to, costs paid or incurred by the Lessor, the Lessee or the Trustee for filing costs, printing costs, reproduction and binding costs, initial fees and charges of the Trustee, financing discounts, legal fees and charges and reimbursements, financial and other professional consultant fees and charges and reimbursements, auditors fees and charges and reimbursements, costs of rating agencies or credit ratings, fees for execution, registration, transportation and safekeeping of the Bonds, credit enhancement premiums and charges and fees in connection with the foregoing.

"Designated Equipment" means Equipment for which title is required by the Department to be in the name of the Lessee upon acquisition thereof and which is described as such in Exhibit D hereto.

"Developer" means the Person or Persons which shall enter into a Construction Contract with the Lessor to construct the Project, or portion thereof, on a "turn-key" basis.

"Engineer" means, with respect to the Project involving the construction of a Building, the professional engineer or firm of engineers appointed to perform the duties of the Engineer in accordance with Section 5.09 of the Lease Agreement. The Engineer may be an employee of the Lessor, the Contractor or the Developer.

"Environmental Regulations" shall mean all Laws and Regulations, now or hereafter in effect, with respect to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. Section 9601, et seq.) (together with the regulations promulgated thereunder, "CERCLA"), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.) (together with the regulations promulgated thereunder, "RCRA"), the Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. Section 11011, et seq.) (together with the regulations promulgated thereunder, "Title III"), the Clean Water Act, as amended (33 U.S.C. Section 1321, et seq.) (together with the regulations promulgated thereunder, "CWA"), the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.) (together with the regulations

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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APPENDIX H

Exhibit FERR-11

Pro Forma for Brevard Labs	Year-Ended 6/30										
	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Income:											
Brevard Community College Appropriation	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000
Educational Programs	100,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000	150,000
Recurring Testing	100,000	175,000	200,000	200,000	275,000	302,500	332,750	349,388	366,857	385,200	404,460
Contracts/Grants	<u>500,000</u>	<u>1,100,000</u>	<u>1,500,000</u>	<u>1,250,000</u>	<u>1,925,000</u>	<u>2,117,500</u>	<u>2,329,250</u>	<u>2,445,713</u>	<u>2,567,998</u>	<u>2,696,398</u>	<u>2,831,218</u>
Total Revenue	1,000,000	1,725,000	2,150,000	2,450,000	2,650,000	2,870,000	3,112,000	3,245,100	3,384,855	3,531,598	3,685,678
Expenses:											
Basic Rent ⁽¹⁾	65,000	452,669	581,294	581,294	581,294	726,294	742,236	742,236	742,236	742,236	742,236
Supplemental Rent Payments ⁽²⁾											
Reserve for Replacements	14,000	14,000	15,400	16,840	18,634	20,497	22,547	24,802	27,282	30,010	33,011
Trustee Fee/Costs	0	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000	7,000
Total Supplemental Rent	14,000	21,000	22,400	23,840	25,634	27,497	29,547	31,802	34,282	37,010	40,011
Building Expenses ⁽³⁾											
Management/Miscellaneous	0	15,000	16,500	18,150	19,965	21,962	24,138	26,573	29,231	32,154	35,369
Insurance	0	20,000	22,000	24,000	26,620	29,282	32,210	35,431	38,974	42,872	47,139
Utilities	0	80,000	88,000	96,000	106,480	117,128	128,841	141,725	155,897	171,487	188,636
Maintenance/Repairs	5,000	15,000	16,500	18,150	19,965	21,962	24,138	26,573	29,231	32,154	35,369
Total Building Expenses	5,000	150,000	143,000	157,300	173,030	190,333	209,366	230,303	253,333	278,667	306,533
Operating Expense ⁽⁴⁾											
Salaries	600,000	700,000	750,000	800,000	800,000	900,000	900,000	900,000	900,000	1,000,000	1,000,000
Lab Supplies	30,000	40,000	50,000	70,000	77,000	84,700	93,170	102,487	112,736	124,009	136,410
Other Supplies	5,000	10,000	12,000	7,000	7,700	8,470	9,317	10,249	11,274	12,401	13,641
Professional Fees	15,000	7,000	7,000	7,000	7,700	8,470	9,317	10,249	11,274	12,401	13,641
Service Contracts	5,000	5,000	5,000	5,000	5,500	6,030	6,655	7,321	8,033	8,788	9,543
Telephone	7,000	5,000	7,000	7,000	7,700	8,470	9,317	10,249	11,274	12,401	13,641
Other/Miscellaneous	10,000	10,000	10,000	10,000	11,000	12,100	13,310	14,641	16,102	17,716	19,400
Total Operating Expense	672,000	777,000	841,000	906,000	916,600	1,028,260	1,041,086	1,055,195	1,070,714	1,187,785	1,279,051
Subcontracts	200,000	50,000	0	0	0	0	0	0	0	0	0
Equipment Maintenance Fund	0	0	50,000	100,000	100,000	150,000	150,000	200,000	200,000	250,000	250,000
Net Surplus	44,000	294,331	512,306	681,466	833,442	747,616	939,765	985,564	1,084,290	1,035,900	1,167,847

⁽¹⁾ Reflects estimated Series 1995 and Series 1994B annual debt service payments from fiscal '96-2003, net of Debt Service Revenue Fund Earnings at 6.5% and capitalized interest. The 06/30/96 figure is also net of a \$100,000 prepayment of rent deposited to the Interest Account from the proceeds of the Series 1995 Bonds. All figures reflect a 09/30 Bond Year.

⁽²⁾ Reflects estimated Indemnure (and/or requirement) exclusive of debt service.

⁽³⁾ Reflects those expenses incurred by whoever (BCC or Brevard Labs) uses the facility.

⁽⁴⁾ Reflects those expenses incurred due to the fact that the facility is being utilized as a laboratory.

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
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For the Period June 10, 1991, Through June 30, 1997

Exhibit FERF-12

*A Partnership Including
Professional Corporations*
201 South Biscayne Boulevard
22nd Floor
Miami, FL 33131-4336
305-358-3500
Facsimile 305-347-6500

Boston
Chicago
Los Angeles
Miami
Newport Beach
New York
St. Petersburg (Russia)
Vilnius (Lithuania)
Washington, D.C.

*Associated
(Independent) Offices:*
Barcelona London
Brussels Madrid
Lisbon Paris

MCDERMOTT, WILL & EMERY

February 24, 1998

VIA FACSIMILE (407) 634-3726

Stephen J. Megregian
Vice President For Business Affairs
Brevard Community College
1519 Clearlake Road
Cocoa, FL 32922

Re: Conflict Of Interest Opinion

Dear Mr. Megregian:

You have asked us to analyze whether, as a matter of law, a conflict of interests can arise under section 112, Florida Statutes, for dual service by (a) a member of the Board of Trustees or (b) an officer of Brevard Community College ("BCC") on the board of a BCC direct support organization ("DSO"). Based on our analysis of Florida statutes and pertinent case law, no conflict of interest is legally possible from such dual service.¹

Direct Support Organizations

By their very nature, direct support organizations are public service oriented entities whose operations are designed to inure to the benefit of the public. Florida statute mandates that a community college DSO must be:

[o]rganized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, a community college in [the] state.

Section 240.331 Florida Statutes (1997). As such, a DSO is empowered only to act on behalf of or for the benefit of the community college. All directors and officers must act in

¹ This opinion does not address the potential conflict of interests that might arise where an individual director or officer of BCC or a BCC DSO engages in any business dealings with a private entity of which that individual is a director or officer.

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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Stephen J. Megregian
February 24 1998
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the best interests of the college, and in effect are acting for the Board of Trustees of the community college.² No provision in the Florida statutes permits a DSO to operate for its own benefit or the benefit of any other entity, except the sponsoring community college. By definition, Florida community college DSOs operate for the public benefit.

A similar conclusion was reached by the Florida Court of Appeals for the Third District in *Metropolitan Dade County v. Miami-Dade County Community College Foundation, Inc.*, 545 So. 2d 324 (1989). In that case, the Court of Appeals was asked to determine whether property held by a community college DSO was exempt from a state ad valorem tax. In determining that the property was exempt from taxation, the Court of Appeals found that its ownership by the DSO constituted public ownership because the DSO should be treated as a public body. *Id.*, at 327-28. "Since the Miami-Dade Community College Foundation [was] only authorized to hold property for the use and benefit of Miami-Dade Community College under Section 240.311, Florida statutes (1985), the land in question is, for all practical purposes held in *public ownership*." *Id.* (emphasis added).

Both the plain reading of the statute and applicable case law demonstrate that community college DSOs are deemed to act for the benefit of the public. As such, there is a unity of interest between the community college and its DSOs. Both entities are required to operate in the best interests of the community college. *See, e.g.*, Sections 240.311 and 240.319(4)(f), Florida Statutes (1997).

Florida Conflict of Interest Law

Section 112, *et. seq.* of the Florida Statutes sets forth a statutory framework which prohibits conflicts of interests by state officers and employees. The express intent of this legislation is to provide "that *public* office not be used for *private* gain" Section 112.311(1), Florida Statutes (1997) (emphasis added). To further this goal, the Florida legislature enacted section 112 which was intended to "implement these objectives of protecting the integrity of government . . . by prescribing restrictions against conflicts of interests, without creating unnecessary barriers to public service." Section 112.311(4), Florida Statutes (1997).

² In effect, the statutorily defined powers of a DSO constitute a subset of the powers mandated to the community college Board of Trustees. For example, section 240.319(4)(f) of the Florida statutes empowers the Board of Trustees to "purchase, acquire receive, hold, own, manage, lease, sell, dispose of, and convey real property, in the best interests of the college . . ." Similarly, section 240.319(4)(p) authorizes the Board of Trustees to contract for the purchase, lease or acquisition in any manner . . . of equipment required by the college."

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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Florida law defines a “conflict of interest” as a “situation in which regard for a *private* interest tends to lead to disregard for a *public* interest.” Section 112.312 (8), Florida Statutes (1997) (emphasis added). Generally, therefore, a conflict of interest can occur only where the *private and public* interests of a state officer or employee are both involved. Matters which involve only *public* interests do not give rise to conflicts of interest under section 112.

In addition to the definitional provisions, Section 112 specifically prohibits certain conduct that could lead to conflicts of interest by state officers or employees. These primarily include prohibitions on: solicitation or acceptance of gifts; doing business with one’s agency; conflicting employment; and post-employment representation or lobbying. Section 112.313(2), (3), (7), (9) and (14), Florida Statutes (1997). Consistent with the general prohibition on conflicts of interest, each of these provisions prohibits state officers or employees from involvement with private business interests in circumstances which implicate their public duties or responsibilities.³ They do not prohibit matters which involve only public interests.

For example, the bar on solicitation or acceptance of gifts prohibits state officers or employees from directly or indirectly receiving *private* payments intended to influence the individual’s performance of his/her *public* obligations. Section 112.313(2), Florida Statutes (1997). The provision on doing business with one’s agency prohibits state employees or officials from engaging in *private* business transactions with their agencies, either on behalf of a business in which they have an interest or in their personnel capacity. Section 112.313(3), Florida Statutes (1997). Similarly, the provision on conflicting employment prohibits continuing employment by a public officer or employee “that will create a continuing or frequently recurring conflict between his or her *private* interests and the performance of his or her *public* duties. Section 112.313(7), Florida Statutes (1997).

The Florida Supreme Court also has held that the conflict of interest laws enacted in section 112.313 apply to matters which involve both private and public interests and do not apply where only public interests are involved. *Penn v. Pensacola-Escambia Governmental Center Authority*, 311 So.2d 97 (1975). In *Penn*, a private citizen challenged the participation by the Pensacola-Escambia Governmental Center Authority in the issuance of a Revenue Bond. The Governmental Center Authority was established to provide administrative support to the City, County, and School Board. Various members of the City Council, County Commission and School Board also served as members of the governing body of the Governmental Center Authority. Among other

³ Note, however, that many of these prohibitions are not absolute. For example, certain related party transactions are permissible if the interested individual discloses the potential conflict and abstains from any involvement in the decision-making related to the subject transaction.

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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allegations, the suit claimed that “membership on the City Council, County Commission and School Board constitute[d] a conflict of interest on the part of the members of [the Governmental Center Authority.” *Id.* at 101. The Florida Supreme Court rejected this claim and held that “the conflict of interest law . . . Chapter 112 . . . covers only conflict between private interests and public interests, not conflict between two public offices.” *Id.* at 101 (emphasis added). Finally, the court also noted that it the Governmental Center Authority had a duty to provide administrative support for the City County and School Board, making the conflict of interest allegation even more untenable.

A plain reading of (a) the legislative intent supporting the Code of Ethics for Public Officers and Employees, (b) the specific prohibitions of Section 112 of the Florida Statutes, and (c) Florida Supreme Court case law demonstrate that the Florida conflict of interest” laws are designed to regulate the commingling of public and private interests. The conflict of interest laws *do not apply* to conflicts between two public offices.

Application of Conflict of Interest Provisions to BCC DSOs

Florida law requires that BCC DSOs be organized and operated for the benefit of BCC. *See Miami-Dade County Community College Foundation*, 545 So.2d 324. Much like the Governmental center Authority in *Penn*, 311 So.2d 97, the DSOs are specifically designed to serve and support the community college and its Board of Trustees. By their very nature, actions by the officers and directors of the DSOs must be undertaken in the best interests of BCC. As such, Florida statute creates a unity of interest and purpose between BCC (including its Trustees and Officers) and BCC’s various DSOs (including their officers and directors).

Given the inherent unity of interest and the statutorily mandated charter of the BCC DSOs, no conflict of interests could arise under Section 112 of the Florida Statutes. *See Penn*, 311 So.2d at 101. As discussed above, section 112 prohibits state employees from acting for the benefit of private interests. Section 112.311, *et. seq.* However, this prohibition does not apply to dual service by BCC Trustees or Officers on the BCC DSO boards.

Exhibit A to the “Preliminary and Tentative Audit Findings” identifies four current or former BCC Trustees (John D’Albora, Eugene C. Johnson, Peter Morton and Bernard Simpkins) and one current officer (Stephen J. Megregian) who served both as Trustees or Officers of BCC *and* as directors or officers of BCC DSOs (FERF and BRTL). According to Exhibit A, none of these five individuals served as a director or officer of any other relevant entity that was not a BCC DSO. These five BCC Trustees/Officers who served on the BCC DSO boards were by statute acting for the benefit of BCC. As a matter

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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STATEMENTS FROM AUDITED OFFICIALS
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Exhibit FERF-12

Stephen J. Megregian
February 24 1998
Page 5

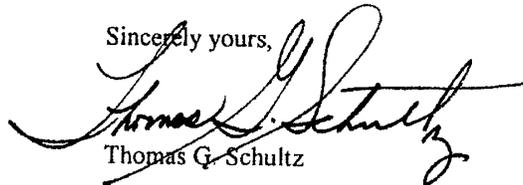
of law, dual service by BCC Trustees or Officers as directors or officers of the BCC DSOs does not create a conflict of interest.⁴

Conclusion

We have reviewed paragraphs 36-41 of, and Exhibit A to, the "Preliminary and Tentative Audit Findings" as those findings relate to service by BCC Trustees and Officers as directors or officers of BCC direct support organizations. Based on an analysis of Florida statute and case law, the Preliminary Findings do not accurately reflect establishment of Florida law. Because of the unity of public purpose between BCC and its DSOs, no conflict of interest could arise from a BCC Trustee's or Officer's service as a director or officer of any BCC DSO.

We have not reviewed and have rendered no opinion on the legal or ethical propriety of involvement by any individual BCC/BCC DSO officer or director as an officer or director other entities which have transacted business with BCC or any BCC DSO.

Sincerely yours,


Thomas G. Schultz

⁴ In fact, *all* members of the State Board of Community Colleges (C. Ron Belton, Randall Hanna, John Belohlavek, Joseph Lang, Frank Brogan, Patrick Byrne, Margarita Delgado, Richard D'Alemberte, George Platt III, Marjorie Starnes, Wendell Williams, Alberta Wilson and Mathew Yarber) similarly serve on the Board of Directors of the Statewide Community College Foundation, which is a statewide community college DSO. Section 240.3315 (which is essentially identical to 240.331) provides for the creation of statewide community college DSOs. These statewide DSOs are similarly mandated to operate for the best interests of the Community College System.

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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Exhibit FERF-13

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

"Helping Floridians create safe, vibrant, sustainable communities"

LAWTON CHILES
Governor

JAMES F. MURLEY
Secretary

February 24, 1998

Dr. Stephen Megregian, Vice President
Financial and Business Affairs
Brevard Community College
1519 Clearlake Road
Cocoa, Florida 329-22-6597

RE: Grant #95-OS-IT-06-15-05-195, Open Access Clean Room Facility

Dear Dr. Megregian, *Stu*

On August 20, Toletha Sylvester and I made a site visit to the Brevard Community College to review the Clean Room Facility grant. Following our visit, you received a letter from Douglas Buck, dated August 29, 1997, which outlined some additional documentation needed to fulfill the provisions of the grant agreement. A second site visit on February 2 confirmed installation of the chiller, as well as nameplate information.

I am pleased to let you know that the letter from the contractor affirming the chiller system as operational and acceptable to the Community College has been received and serves as the final documentation on the grant. All outstanding items have been adequately addressed and the grant file can now be closed.

We wish you good success with the operations in the Clean Room and hope that it will be a well-used resource in the County. If there is additional information you require from the Department, please call me at (850) 922-6070.

Sincerely,

Susan Fleming
Operations and Management Consultant
Energy Policy and Technical Assistance
Florida Energy Office

/SF

cc: Charles Anderson, Inspector General, DCA
Toletha Sylvester, Contract Auditor, DCA
Rosa Morgan, Chief, Bureau of Community Assistance
Grant File

2555 SHUMARD OAK BOULEVARD • TALLAHASSEE, FLORIDA 32399-2100
Phone: 850.488.8466/Suncom 278.8466 FAX: 850.921.0781/Suncom 291.0781
Internet address: <http://www.state.fl.us/comaff/dca.html>

FLORIDA KEYS
Area of Critical State Concern Field Office
2794 Overseas Highway, Suite 212
Marathon, Florida 33050-2227

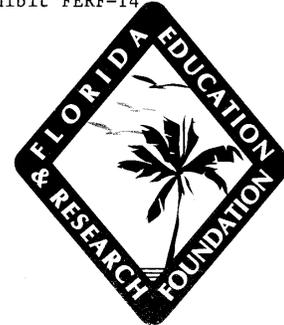
GREEN SWAMP
Area of Critical State Concern Field Office
155 East Summerlin
Bartow, Florida 33830-4641

SOUTH FLORIDA RECOVERY OFFICE
P.O. Box 4022
8400 N.W. 34th Street
Miami, Florida 33159-4022

EXHIBIT – F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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Audit
Report
Par.
No.

Exhibit FERF-14



Mailing: P.O. Box 2389, Melbourne, FL 32902
250 Grassland Rd. S.E., Palm Bay, FL 32909
Telephone 407-724-8009

February 27, 1998

Charles L. Lester, C.P.A.
Auditor General
111 West Madison Street
Tallahassee, FL 32302

Dear Mr. Lester:

(64-68)

After I mailed the response to the audit, I received another letter from the former FERF president responding further to the duplicate payment issue discussed in paragraphs 50-53 of the Preliminary and Tentative Audit Findings.

I have attached that letter to this cover letter. Please include the letter from the former FERF president as Exhibit FERF-14 to the FERF response.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephen J. Megregian".

Stephen J. Megregian

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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Audit
Report
Par.
No.

Exhibit FERF-14

FLORIDA EDUCATION &
REDEVELOPMENT FOUNDATION

February 25, 1998

Steve Megregain
Vice President of Business Affairs
Brevard Community College
1519 Clearlake Road
Cocoa, Florida 32922

Dear Steve:

(64-68)

Ever since the so-called "double billing" issue arose, as referenced in paragraphs 52 and 53 of the "Preliminary and Tentative Audit Findings" of the Auditor General, I have been haunted by the term "PECO RECOVERY", which appeared as the heading for the spread sheet identifying the payments. The whole thing has seemed a mystery, but I have continued to pursue it, in my own mind, as well as, in conversation with others associated with B.T.R. Labs. It is easy for memories to fade after six years, especially when the details involve reconstructing accounting procedures and matters related thereto. It has been difficult for me to accept however, that the personnel associated with B.T.R. Labs at the time would have fabricated a "double billing scheme".

While I was never personally involved in the operation of the labs I was sufficiently aware of their development to have a reasonable idea of what was going on. From my recollection, observation and conversation with others who were a part of the B.T.R. Lab operation, it appears to me that what took place is as follows:

In the spring of 1992, B.T.R. Labs asked for and got from TRDA a \$70,000 grant to help furnish the labs. A requirement of that grant was that the college would match the grant with \$90,000 of its funds. Therefore, throughout the spring, the college and TRDA combined to undertake the furnishing of what was to become a world class microbiology lab, and I am told that the entire \$160,000 was committed and spent for that purpose that spring.

As that grant was winding down, the state appropriated \$2 million dollars in PECO money to BCC to continue what had been started, the furnishing of those world class labs. There was a considerable unspent balance of these PECO funds by late summer of 1992. It was apparently about this time that the spread sheet was developed showing in the left hand column those items which had been purchased in the spring from the B.C.C. cost center and a list of items in the right hand column which apparently were billed by B.T.R. Labs to P.E.C.O. for recovery by B.T.R. Labs for B.C.C. from the excess P.E.C.O. funds. Once the "P.E.C.O. RECOVERY" had been effected there obviously was some accounting mixup and the recovered funds were left in the B.T.R. Labs account.

P. O. Box 100280, Palm Bay, FL 32910-0280 • 407-632-1111 ext. 22071 • Fax 407-634-3742

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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Exhibit FERF-14

In conclusion, it appears to me that what took place was not a "double billing scheme" as it appeared on the surface to the auditors. Rather, it was an attempt to reimburse the college from an appropriate source, PECO, for the \$90,000.00 it had pledged and used from college funds. Regrettably, the program apparently got messed up in its details and was not done properly.

Hopefully, this attempt to assist in reconstructing what happened six years ago will be helpful.

Sincerely,



Tom Adams

EXHIBIT - F (Continued)
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FLORIDA EDUCATION &
REDEVELOPMENT FOUNDATION

March 9, 1998

James Dwyer, C.P.A.
Audit Coordinator
c/o The Auditor General
111 West Madison Street
Tallahassee, Florida 32302

Dear Jim:

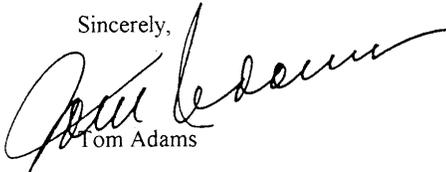
Pursuant to our telephone conversation of this morning, I am pleased to enclose herewith the following:

1. A copy of the memorandum from Tom Denison to Dr. King, dated August 19, 1992.
2. A copy of the memorandum from Steve Megregian to Dr. King dated September 2, 1992.

Please attach the Denison memo to the F.E.R.F. response to your preliminary findings as Exhibit 15 and the Megregian memo to the same response as Exhibit 16.

Your attention to these matters is deeply appreciated.

Sincerely,

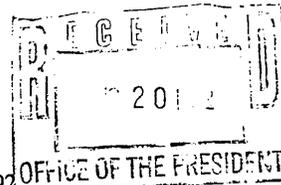

Tom Adams

enclosures

P. O. Box 100280, Palm Bay, FL 32910-0280 • 407-632-1111 ext. 22071 • Fax 407-634-3742

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
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August 19, 1992



Dr. King:

There are numerous irregularities associated with the Analytical Lab which I have been counseled to bring directly to your personal attention. I am presuming that you are unaware of these irregularities and it is imperative that you, as CEO, know what has happened so that you can initiate whatever corrective actions you deem appropriate.

NMR (Nuclear Magnetic Resonance Spectrometer):

Mr. Adams has spoken freely in the company of faculty and others about the history of the NMR which, you may or may not be aware of, was purchased originally through FIT without regard for mandatory state purchasing procedures. He outlines the history by noting that FIT purchased two NMR's. The one kept by FIT was a substantially more capable machine and carried a much higher cost. He indicates that the bill was split which left BCC paying for \$80,000 of FIT's machine. You need to be aware that Mr. Adams states that you are aware of this and that you have directed him to purchase the new NMR so that, "the books can be washed clean."

The scientists who use the lab have noted that the lab could likely never fully utilize the capability of the NMR currently owned, particularly if the \$80,000 was recovered from FIT and put into machine upgrades. They also note that there is absolutely no need for a high-end NMR not only because there is very limited demand, but also due to the availability of FIT's NMR. The scientists also question the need for the proposed FTIR.

The practice of purchasing expensive capital equipment through third party organizations should be reviewed immediately. It is my understanding that this is a clear violation of state statutes which require that in instances where third parties are utilized they must be contractually held to the same purchasing requirements as the state entity that is providing the funds.

Institutes/Foundations/Corporations:

Mr. Adams and Ms. Billings have established four separate organizations through which they do business. Thousands of dollars are moving back and forth between these organizations, which include:

1. Indian River Region Environmental Institute (IRREI)
2. Brevard Teaching & Research Labs (BTRL or Brevard Labs)
3. Research Marketing Associates (RMA)
4. Florida Education & Research Foundation (FERF)

EXHIBIT - F (Continued)
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Mysterious Cost-coding:

From inception through June 15, 1992, over \$78,000 in BCC funds was paid to IRREI. I am told that you made a \$90,000 commitment to establish the Shellfish Lab. Throughout the year I questioned why the equipment and personnel for this activity were charged to account #120120 for which I was budget custodian. This account is cost-coded for vocational instruction yet the supplies and personnel expenditures had virtually nothing to do with instruction, vocational or otherwise. Early in the year a very expensive computer system (about \$8,000) for Ms. Billings was charged to account 120110 (Palm Bay Liberal Arts). When I questioned, "Why?" I was simply told not to worry about it. Later I questioned why Teresa Hannah's salary was charged to my vocational instruction account since she washes glassware and cleans up the Shellfish Lab. I was told, in writing, that this is the way Mr. Megregian wants it.

A review of the ledger for IRREI reveals that BCC is the only significant source of revenue. Deposits to IRREI's account through June 15 were less than \$5,500.

Frank Christmas & PECO Funds:

Mr. Adams boasts of being able to get BCC's PECO allocation boosted from \$1 million to \$2,040,000 in exchange for raising scholarship funds for a Mr. Frank Christmas (a student at Florida Tech.). He openly implicates Mr. Clark Maxwell as being the hinge-pin around which the deal was made. The IRREI ledger reveals that \$3,500 was paid to Mr. Christmas in late 1991.

TRDA Contract Deception:

The Analytical Lab contract clearly states that 10% of outside user revenue is to be returned to TRDA. \$10,000 in revenue from FAR Research, Inc. use has been deposited into RMA and there has been no payment made to TRDA for this user. FAR has actively used the lab from April through the present and has been billed \$2,500 per month. Clearly, \$1,000 should have been returned to TRDA for the period from April through July. The Analytical Lab Quarterly Report to TRDA documents that these funds were not reported.

In the presence of several others, Ms. Billings told me an outright lie about the FAR Research revenue. Not knowing that I was aware of the payments, she stated that she had opted to not charge them in order to focus on, "the bigger picture."

TRDA Billing for Shellfish Lab Services:

When the Shellfish Lab became operational Brevard Labs was adamant in an attempt to

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bill for lab services directly to TRDA without processing invoices through BCC. The contract for this service is between BCC and TRDA; not BTRL and TRDA. Mr. Megregian wrote a letter to TRDA which stated that Brevard Labs is a direct support organization of BCC and therefore it would be appropriate for the billing to be processed directly between Brevard Labs and TRDA. The TRDA's attorney advised Mr. Kinney that the billing must come through BCC since this is specifically stated in the contract.

My intent in bringing this specific matter is only to make you aware of the serious attempts to move funds around BCC's institutional structure. The Shellfish Lab is a well managed operation within itself and I have no reason to believe that the lab operation as a stand-alone entity has any deficiencies beyond the fact that it is not yet self-supporting.

Questionable Purchases:

IRREI has purchased several items from Ms. Billings and her husband (Will Cromer) at prices which, to me, seem grossly excessive. These purchases include:

1. a used refrigerator (\$500);
2. a water bath (\$1,500 + \$50 delivery & set-up fee);
3. a used Epson computer (\$750).

Mr. Freitag (the NMR technician) is currently being paid \$280 per month above his salary by IRREI in rent for his personal tools. RMA paid his motel bills during late April and early May.

IRREI paid over \$10,000 for cabinets for the Shellfish Lab without regard for the state bid requirement.

Mr. Adams and Ms. Billings combined mobile telephone bills only exceeded \$845 and \$761 respectively for the months of April and May 1992. Charges for the month of May to Mr. Adams mobile line reveal that 32% of the calls and 32% of the on-line charges are to his personal residence.

The Business Plan:

As a condition of grant support to the Analytical Lab, TRDA insisted on the development of a business plan. Mr. Keener Smathers was paid \$13,500 to develop this plan. The document is probably 200 pages in length (pages are un-numbered) yet only 30 pages of the plan is anything other than photocopies of previously existing documents. The first 30 pages are primarily a regurgitation of other existing materials, however it is notable that

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the revenue projections are, in my opinion, grossly over stated while the expenses for repair and maintenance are substantially under-stated. I was told by Ms. Billings that Mr. Smathers plan was thrown out because it was worthless and that she ended up compiling the document of record. Although I am the Principal Investigator of record, I was not afforded the opportunity to either review or input into this plan prior to its distribution.

Lack of Qualified Leadership:

As Center Director, budget custodian, and Principal Investigator for the grants, it is my personal opinion, as well as the expressed opinion of others who have scientific qualifications, that there is a distinct lack of leadership in the entire laboratory operation. Neither Mr. Adams or Ms. Billings have the scientific or business background and qualifications necessary to successfully manage this operation. Eric Benzing, the accountant, lacks the experience to properly manage the fiscal paperwork which is evidenced by numerous errors and a complete lack of understanding for the complexities of the operation as well as the interface with BCC.

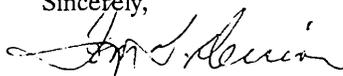
Faculty & Staff Questions:

Be aware that throughout the past year I was constantly bombarded with innocent yet probing questions regarding the Labs or the Lab employees. During recent months even adjunct faculty have been questioning what is going on in the Labs. Several individuals have inquired why Clark Maxwell's daughter-in-law is employed by the Lab and wonder what she is doing?

In closing I trust that you concur that it is appropriate that I bring these irregularities to your direct attention. I further trust that you will understand the need to protect myself from potential allegations of impropriety. It is my intention to fully extricate myself from all involvement with the Labs. With your permission I choose to resign from the board of Brevard Teaching & Research Labs and request that I be replaced as Principal Investigator on both TRDA grants.

Please consider this a personal communication. Copies have not been distributed and I have not discussed this document with other College personnel. I will, of course, cooperate in any way that is deemed beneficial for the good of Brevard Community College and stand ready to assist you in any way that I can.

Sincerely,



Tom G. Denison

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BREVARD COMMUNITY COLLEGE

September 2, 1992

TO: Dr. King
FROM: Stephen J. Megregian
V.P. for Business Affairs
RE: Response to Memo from Tom Denison

I have reviewed the memo from Tom Denison. As much as possible, I have researched the various rumors, innuendoes, and seeming improprieties mentioned in that memo. The following is a point-by-point report of the results of my research into the matter:

NMR - The statement that Tom Adams has spoken "freely" about the situation with the NMR is correct. However, the illusion painted is missing a very important fact. It is all hearsay. It is possible that what Tom Adams thinks happened, might have actually happened. However, it is also possible that it never happened. We have no proof of whether or not anyone from either Bruker or FIT participated in the "bill splitting" that has been alleged.

When this matter was brought to your and my attention some months ago, preliminary talks had already taken place with Mr. Bruker. For whatever reason, whether guilty, or innocent and just wanting to avoid a lot of potentially bad publicity, Bruker appeared very willing to work with us. As a result Bruker agreed to upgrade the NMR at very favorable terms to BCC, and to provide two year's of maintenance. Also, at that time we were facing a very large repair bill on the NMR caused by the apparent negligence of one of our employees. Again, Bruker worked closely with us on that situation, and Bruker agreed not to bill us for the repairs, which could have run upward of \$50,000.

When we collectively discussed this situation, we were faced with making a decision. Our choices were to work with Bruker or to "go public" with our allegations. Again, we had no proof. Had we pursued the allegations, none of the results would be any good. The result could have been that FIT/Bruker were innocent. In that case we would have made a lot of enemies, we would have embarrassed ourselves, and BCC would get nothing but repair bills and service contracts to pay. Another result could have been that FIT/Bruker were

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guilty but we could not prove it. In that case both of those entities would have "hunkered down" and again, nothing would have been gained. BCC would have come out of it looking foolish and with nothing but bills to pay.

The last alternative was that we might have been able to prove that some wrongdoing did exist between FIT and Bruker. In that case, someone from FIT would have been in trouble, BCC might have been able to recover some restitution from either Bruker or FIT or both and again, our relationship with both Bruker and FIT would probably have been destroyed. Therefore, looking at the situation from a business standpoint, no alternative was good if we went public and tried to prove the claim. Remember also, the "bill splitting" allegation originally came to us from a Bruker employee. If we pursued the matter, it was very, very unlikely that the Bruker employee would have supported that claim because, at that point, Bruker would have probably applied enormous pressure on their own employee. However, since Bruker was being very cooperative in "making the situation right" whatever their motivation, we concluded that the college's best course of action was to secure as much as possible from Bruker.

I have studied the terms of the agreement with Bruker to trade in the NMR for a more powerful NMR. In my opinion the terms of that trade more than adequately recover for BCC any value which may have allegedly been lost in the earlier alleged bill splitting. Of course, this is the kind of decision that could be second guessed no matter what we decided. Did we make the right decision? I think so. BCC got a lot of value from Bruker. Had we chosen another course of action BCC probably would not have gotten anywhere near this much value, but we would have gotten a huge headache over the incident.

Tom Denison also alleges that the high end NMR is not needed. Again, that is a matter of opinion. It is more of a machine than is needed to just teach. We could teach on the machine we are trading in. However, the lab is, and will be, a delicate balance between teaching, research, and industrial use. Without the ability to keep the machines in the lab busy doing research and production work, the machines would deteriorate when not in use and the usefulness in a teaching environment would be greatly deterred because the students could not get any practical experience on them. Therefore, industrial use has to be an important factor in determining which level of machine to buy. In the case of the NMR, Sandi Billings has developed a very interested potential customer for the 400 mh NMR. That customer, a multinational petrochemical company has a 200 mh NMR but wants and needs the advanced capability of the 400 mh unit. Again, this is a business decision that could be argued either way. But, again I think BCC made the correct decision regarding

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the NMR purchase.

The last paragraph of the NMR section of Tom Denison's document expresses some concern re using "third parties" to purchase items. That was basically done in two instances. First, BCC used FIT to purchase the original complement of high tech machines for the lab. That decision was made only after a contract with FIT was negotiated in which the lab director's salary was to be shared jointly by BCC and FIT, and FIT was to act as BCC's agent in purchasing the machine. BCC took this proposed arrangement to our Board of Trustees, and the Board, after the Board Attorney opined that it was a legal arrangement, approved the contract.

The second instance was with the Indian River Regional Environmental Institute (IRREI). Again, BCC has a contract with the IRREI and that contract specifies that IRREI will assist BCC in the development of the labs. To my knowledge the IRREI has followed BCC rules when buying items for the lab. In fact, Tom Adams has checked personally with me on many occasions about purchases, prior to the purchase, so that everything will be correct and BCC's rules would not be broken. On several occasions I have advised Mr. Adams how to do something so that it would be legal and he has, to my knowledge, always followed my instructions. In all probability, since BCC now has access to the PECO appropriation, there will be little need for IRREI to purchase things for the lab in the future.

Institutes/Foundations/Corporations - Three of the four organizations listed are not directly connected to BCC. The Brevard labs is a direct support organization of BCC. As such, BCC exercises close control over the operations of that entity and that entity must, by law, be audited by an independent CPA and that audit must be submitted to the BCC Board and the Florida Auditor General. The IRREI is a private corporation. For 1991-92, BCC had a contract with IRREI calling for a payment to IRREI of \$5,000 per year. For that fee, IRREI was to provide management services to BCC to help in the development of the labs. This was a routine business arrangement and there is absolutely nothing "sinister" or "irregular" in any way with this arrangement. In fact, IRREI has performed invaluable service to BCC in developing the labs at the Palm Bay Campus. The RMA Corporation and the FERF Corporation have nothing to do with BCC. No BCC money goes to either organization. To say that "thousands of dollars" are moving back and forth is a gross distortion of what is occurring. Money spent by Brevard labs is of direct benefit to BCC and is audited as stated before. Money going to IRREI is for two purposes. First is the payment of the \$5,000 contract. Second, on occasion, and with prior approval of BCC (generally I have been directly involved in those approvals), IRREI has purchased something which is ultimately intended for BCC. In those cases BCC

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reimburses IRREI based on the actual cost paid by IRREI as supported by the invoice to IRREI when the purchase was originally made. There is nothing irregular or improper about any funds paid by BCC to IRREI for this purpose. BCC has paid nothing to RMA or FERF. Since RMA and FERF have nothing whatsoever to do with BCC, I have no knowledge of any funds associated with these organizations.

Mysterious Cost Coding - After I reviewed the various items charged to accounts 120120, and 120110 I have concluded that all these items should have been charged to 120110. However, for all practical purposes, there is no difference between these account codes. Account 120110 is for items intended for use in A&P instructional programs. Account 120120 is for items intended for use in vocational programs. At first I thought the chemical instrumentation program would be like the electronics program, therefore 120120 was used. However, after further research, the Chemistry Instructional program is actually in the AA area rather than the AS area. Therefore, the correct account is 120110. This difference is not significant in the reports that go to the State, etc.. In those cases, all reporting is done at the level of "instruction." In my opinion, all items listed in Dr. Denison's memo, since they are all intended to support the various instructional programs being developed for the labs, are correctly coded as instruction.

It is of no concern to BCC what IRREI's total income is. What is of concern to BCC is that BCC has a contract with IRREI requiring IRREI to perform services to BCC. IRREI performed those services in an exemplary manner. Therefore, IRREI was entitled to the \$5,000 called for in the contract.

Christmas/PECO - I am not sure what Dr. Denison is talking about. The PECO Lab Project was supposed to be for three years and was supposed to bring several million dollars to BCC. After the first year, and the first 900k, somehow the project got closed out in DOE's books. BCC tried to re-institute the item in both the 90-91 and the 91-92 PECO bills but was unsuccessful. Mr. Adams was successful in getting the line item resurrected in 1992-93 for \$2,049,000. There was never a "million" dollar number. BCC would not have any knowledge of, nor interest in any sums paid by IRREI to anyone, for any reason. I have no idea who Frank Christmas is, and if IRREI wants to pay him \$3,500 of their money, so what. The actual DOE individual who worked with Mr. Adams in getting the Lab PECO project resurrected was Ron Fahs. Mr. Fahs and Mr. Adams worked through the process of reopening the item and getting it on the State Board list. Thereafter, it was ultimately approved by all the levels of the Tallahassee bureaucracy.

TRDA/Contract Deception - Mr. Adams solicited a donation from FAR Research of \$10,000. The money was solicited on behalf

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of FRA and its purpose was to pay the salary of Eric, the bookkeeper for IRREI, FRA, and FERF. The money was not solicited, nor donated, for the purpose of FAR Research using the instruments in the lab. Therefore, there was no connection between this donation and the requirement to pay TRDA 10% of the lab use. When I discussed this matter with Ms. Billings, she maintained that FAR Research has been a very valuable resource to BCC in the development of the labs.

TRDA Shellfish Billings - I was directly involved in the shellfish lab billing question. Brevard Labs, because of the volume of testing they could see on the horizon, wanted to get BCC "out of the middle" of the billing for shellfish billing. I was told that the billing was coming to BCC and BCC was then re-billing TRDA for the samples. When the bill was paid, TRDA would pay BCC and BCC would then pay Brevard Labs.

With that scenario in mind, BCC is an unnecessary third party in the process, and we decided to ask TRDA for permission to bill direct from Brevard Labs to TRDA. I sent Frank Kinney a letter requesting the direct billing. Frank responded no. He wanted the billing from BCC. I then asked Dick Becker to research the correct accounting treatment for handling the shellfish billing through the BCC books. There are two significantly different possible procedures and I wanted to make sure the one we used was correct under accounting rules. The whole business of saying "Brevard Labs was adamant" is ridiculous. Brevard Labs made a reasonable request to reduce bureaucracy. I agreed to pursue it, sent TRDA a request and TRDA said no. Again, there is absolutely nothing sinister about this. The statement that this was "an attempt to move funds around BCC's institutional structure" is ridiculous and untrue. In fact, since Brevard Labs is a direct support organization, nothing in this arrangement would have "gone around" BCC's organizational structure.

Questionable Purchases - IRREI has made the purchases listed. However, the illusion that the prices were "grossly excessive" is a gross exaggeration. "Used refrigerator" was a two month old refrigerator, costing \$650 new, in perfect condition, which was purchased for \$500. To receive approximately a 25% discount from something which was 2 months old and will probably last 15 years was a very good buy for the college, not the sinister sounding "used refrigerator." The water bath was purchased for \$1,500. A similar water bath was also purchased from another source for \$2,500. Again, the \$1,500 was a good buy. In this case, because Ms. Billings' husband is an engineer, he purchased the components and built the water bath at a price which was 40% less than BCC would have paid for an assembled water bath on the open market. The Epson Computer was not purchased from Sandi Billings or her husband. Dr. Denison's information in that instance is incorrect. Mr. Freitag is

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indeed receiving \$280 to supply his personal tool to the lab. This is an interim arrangement that I approved through July 1992. The NMR is far too sophisticated for the tools BCC has on hand. The tools Mr. Freitag supplied are critical and are needed to keep the NMR functioning properly. We priced renting the tools on an interim basis and the necessary tools would have cost about \$1,600 per month to rent, a far cry from the \$280 per month Mr. Freitag was paid through July. I only approved the arrangement through July because BCC will purchase its own instruments from the PECO appropriation. IRREI did not pay over 10k for any cabinet purchase. Mr. Adams came to me with a quote which was over \$10,000. I told him to reduce the purchase to under 10k in order to stay within the bidding rules. Mr. Adams then purchased about \$9,500 of the cabinets. Mr. Adams and Ms. Billings phone bills are not paid by BCC funds and these bills are of no concern to BCC.

Business Plan - The business plan was a requirement of a TRDA grant. In fact it was a line item in the grant. The plan was developed by Mr. Keener Smathers. Several drafts of the plan were distributed for comment to many individuals. In fact, according to my information, Dr. Denison received copies of 2 drafts of the plan, but he never gave any input back to Mr. Smathers regarding the plan. At that time I also reviewed a draft of the plan. Others who have received the plan refer to it as an excellent document and TRDA is happy with it. Ms. Billings told me that she liked the plan. That contradicts the information in Dr. Denison's memo.

Lack of Qualified Leadership - Is the lab succeeding? Is it growing? Yes and yes. In fact when I visited the lab, I found it fascinating and operating smoothly. The people I talked to in the labs seemed to know what they were doing and where they were headed. That was true with everyone I talked to except Don Astrab. He was very confused about his role. He was also confused about the labs and how they were to relate to both him and BCC. The statement that Mr. Adams and Ms. Billings are not qualified for what they are doing is directly refuted by their accomplishments. As for Eric, we are aware of both his qualifications and shortcomings. In fact, Mr. Becker is carefully monitoring his work in some areas because he is inexperienced in those areas. Mr. Benzing is not expected to understand the complexities of BCC. He is not employed by BCC. All BCC accounting in that area is done by Laura Phillips. She is well qualified to do that work.

Faculty and Staff Questions - I found out the answers to the questions by talking to people. Also, in many of the concerns raised by Dr. Denison I was aware of the answers because I had been involved in seeing that those things were done correctly. Dr. Denison should have already had answers to all these questions. He should have done what I did. He

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should have asked. Don Astrab should not have had any question about his role with the labs, because he should have been thoroughly briefed on the labs. If someone inquired about Brenda Maxwell, they should have been told what she already accomplished in the brief time she has been employed. They should have also been informed that she is not employed by BCC, but by Brevard Labs. Clark Maxwell, Jr., who is her father-in-law, has been gone from here for about 6 or 7 years. He can no longer "help" us as he could do when he was a State Senator. To raise unfounded "suspicions" that there is something sinister concerning Brenda's employment is just not right. He should have found out, not raised questions.

My Summary - The perceptions raised in Dr. Denison's memo are just that, perceptions. It is the job of every supervisor to know what is going on around him/her. Over and over again, a question was raised which had a logical answer. For the most part, those answers were easy to find and easy to document.

It is no accident that I was involved in a lot of the items that were raised. I try to make it my business to know what goes on with the College's financial operations. I am involved, continually with these, and many other complex parts of the college operations. As Center Director at Palm Bay, I think Dr. Denison should have been much more involved in what was the structure of the labs. It is evident to me that he was not on top of it.

Perhaps he thought he should not be more involved. If so, it is too bad that he had that perception because had he been involved, he would have known what was going on. He would have also helped the new Chemistry teacher, Don Astrab understand what was, and continues to go on around him. I found Dr. Astrab ready, willing, and in fact eager to become a participant in the development of the labs.

If you want me to do any additional work in this area, please let me know. Otherwise this is my report.

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March 11, 1998

Mr. Charles Lester
Auditor General
Office of the Auditor General
P.O. Box 1735
Tallahassee, FL 32302

Dear Mr. Lester:

Per request from Mr. Ken Artin, please add the attached document, labeled Exhibit FERF-17, to the FERF audit response.

Sincerely,



Stephen J. Megregian

SJM:jh

Enclosures

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No.

Exhibit FERF-17

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March 12, 1998

Mr. Steve Megregian
Brevard Community College
1519 Clearlake Road
Cocoa, Florida 32922

Dear Mr. Megregian:

I have reviewed the Preliminary Findings of the Office of the Auditor General regarding the audit of Brevard Community College, Florida Education and Research Foundation, Inc. and Brevard Teaching and Research Laboratories, Inc. and I would respectfully request that the enclosed letter dated January 7, 1998 and all of the attached exhibits be submitted as part of the record of the response submitted by Florida Education and Research Foundation, Inc. The letter is our attempt to properly recharacterize certain amounts discussed in the preliminary findings of the Auditor General that were disbursed or paid with respect to the City of Palm Bay, Florida Lease Revenue Bonds (Florida Education and Research Foundation, Inc. Project) Series 1994A and B and the City's Lease Revenue Refunding Bonds, Series 1995A.

(110-111)

In addition to the items set out in my attached letter, I would also like to respond to matters numbered (88) and (89) of the Auditor General's Preliminary Report as follows:

In regard to the 1994 Bond transaction, competitive sales of municipal bond issues are most cost effective to the issuer when that entity has a proven track record regarding the sale and repayment of its debt obligations. Where a transaction is complex, novel or otherwise best understood through time consuming education processes, such bond issue will most likely be sold through negotiation to an investment banker who can successfully market the Bonds. This is the case in the subject situation.

Regarding the 1995 Bond transaction, at the time of the refunding of the 1994 Bond transaction, the 1994 Bonds were in a "no call" period in which they were not refundable without the consent of the holders

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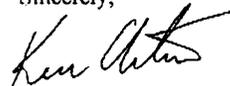
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of the 1994 Bonds. In other words, the holders of the 1994 Bonds had no obligation to tender their Bonds for a refunding to benefit Brevard Labs, and as the market had made the original interest rates on the 1994 Bonds very favorable for the holders of those instruments they had no business incentive to sell them. During the period in which the 1995 refunding was approved, the investment bankers who had been engaged in the 1994 transaction, held all of the 1994 Bonds. No refunding and no savings to Brevard Labs were available absent the 1994 Bondholders consent, therefore, the refunding of the 1994 Bonds were virtually precluded from being accomplished through a competitive sale. Brevard Labs approval of the 1995 negotiated transaction resulted in a substantial savings to the Labs which could not have been possible otherwise.

Sincerely,



Kenneth R. Artin

KRA/dib
Enclosure

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January 7, 1998

Mr. Maxwell C. King
District President
Brevard Community College
1519 Clearlake Road
Cocoa, Florida 32922

Dear Mr. King:

In your letter dated December 12, 1997 you requested our firm to assist the College in its effort to respond to inquiries that were being made of the College by the Office of the Auditor General. With that in mind I went back into the file to retrieve background financial information that was prepared at the time of these financings which may respond to some of the inquiries that have been made. It is important to remember that with respect to both financings the City of Palm Bay, Florida acted as the conduit issuer of the bonds and the City retained its own independent financial advisor to guide it through the process and provide financial advice on each of the transactions. The City's financial advisor was A.G. Edwards & Sons, Inc. Tampa, Florida. This firm was not retained by the College and represented the interests of the City in the transactions. Much of the information that I will be sharing with you will be from letters and reports prepared by A.G. Edwards that was prepared contemporaneously with each of the bond sales.

Before I get into the specifics of the financial information lets go back and refresh our memories on how the transactions were put together and the roles of the various parties that participated in the financings. I already mentioned the City's role and that of A.G. Edwards. Prager McCarthy & Sealy played two roles and it is important that we clearly understand the relationship of this firm in each of its roles. On October 5, 1994, the Bond Purchase Agreement between the City and Prager McCarthy & Sealy was executed and Prager McCarthy & Sealy agreed to make a limited private placement of the 1994 Bonds. For several weeks prior to the initial closing, Prager McCarthy & Sealy was negotiating with the proposed ultimate purchaser of the bonds which was a mutual fund from Boston, Massachusetts. The financing team was taking comments from the investor and their outside counsel, who was actively reviewing documents, and were making the necessary changes to accommodate their comments. It is my recollection that several items or concerns needed to be addressed but in order to keep the project on its proposed construction timetable, Prager McCarthy & Sealy agreed to underwrite the sale of the 1994 Bonds on October 5, 1994; their underwriting was based upon representations of this proposed ultimate purchaser that Prager

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McCarthy & Sealy should not continue to market the 1994 Bonds to other investors and the fact that purchaser's counsel had been retained and was actively involved in negotiating the documents. The 1994 Bonds were then to be resold to the institutional investor the next week. The rates and terms negotiated on October 5, 1994, which included the amount of an original issue discount, contemplated the sale to the ultimate purchaser at the later date and were based on market requirements and comments from that purchaser. For this service Prager McCarthy & Sealy was compensated as the underwriter with a fee equal to \$181,900 (approximately 2% of the par amount of the 1994 Bonds), of which \$30,000 was paid to their legal counsel for legal fees and expenses.

As things turned out, the institutional investor that was to buy the bonds from Prager McCarthy & Sealy never purchased the bonds. Prager McCarthy & Sealy began marketing the 1994 Bonds to other investors but at some point thereafter the interest rates in this market changed and if Prager McCarthy & Sealy were to have sold the 1994 Bonds at that time they would have had to sell the 1994 Bonds at a loss. At that point in time the relationship of Prager McCarthy & Sealy to the City changed to that of an investor in the bonds. They no longer held them as an underwriter and became the registered owners of the bonds. What is interesting about this situation is that Prager McCarthy & Sealy, like most underwriters, is not in the business of buying and holding bonds for any extended period of time, especially unrated bonds such as the 1994 Bonds. Many have portfolio restrictions which prohibit such investments. At the time of the mutual fund's determination not to purchase the 1994 Bonds, Prager McCarthy & Sealy was presented with three alternatives: (i) to continue to hold the 1994 Bonds as investors, (ii) to attempt to sell the 1994 Bonds under the same documents and structure at a loss in that market, or (iii) to attempt to strengthen the financing by obtaining a credit rating for the 1994 Bonds. Through the efforts of Prager McCarthy & Sealy, the 1994 Bonds were assigned an investment grade rating of "Baa" from Moody's Investors Service. As a result of the acquisition of the rating the 1994 Bonds increased in value to their holder: Prager McCarthy & Sealy. Rather than realize the entire increase in value for themselves, Prager McCarthy & Sealy helped structure the 1995 Bond transaction which provided savings to the transaction in excess of \$400,000 of present value savings plus an additional \$100,000 was deposited into the sinking fund for the 1995 Bonds. It is important to note that neither the College, the City nor Brevard Labs was under any obligation to help Prager McCarthy & Sealy secure a rating on the 1994 Bonds or assist in the reselling of the 1994 Bonds. All of the actions taken by Prager McCarthy & Sealy were their sole responsibility and any charges they incurred were completely borne by them. They were also at risk for any market shifts in the interest rates. This means if interest rates increased in the financial markets the value in the 1994 Bonds would be worth less and vice versa.

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With respect to the actual pricing of the 1994 Bonds in October 1994, A.G. Edwards prepared a pricing book for the City, a copy of which is attached, comparing the yields on the 1994 Bonds to other comparable bonds being sold at approximately the same time. Their report compares the 1994 Bonds to an unrated issue of the Northern Palm Beach Water Control District which was priced 10 days earlier. Keeping in mind that the final maturity of the District's bonds was in 2015 and the final maturity of the City's Bonds was in 2024, nine years longer, there was only a 90-basis point difference in the yields. The calculation of a bond's yield takes into account the price paid for the bond which includes any original issue discount. This difference in yields could have very easily been due to the fact that the Water Control District was a seasoned issuer which was known in the market and their bonds were backed by liens on special assessments on a parity with city and county taxes. The Brevard Labs financing involved an unknown entity and a start-up enterprise. I do not believe at this point in time I am any more qualified to do any better than the City's financial advisor in generating comparisons. Generally, the pricing book includes as many comparables that can be found at the time. I am not a financial analyst, and like the City must rely on its advisors for such information. It should be noted that the City's advisors were not hired by the College and their interests were aligned with the City and not the College or Brevard Labs and should serve as an objective standard.

Now let us focus on the 1995 transaction which occurred in April 1995. The 1994 Bonds were then, rated and could trade in the market at a premium equal to or greater than 5% of the par amount of the 1994 Bonds according to the valuation of A.G. Edwards as stated in their March 23, 1995 letter to Michael Abels, a copy of which is attached. Based on this valuation this premium equaled approximately \$447,750. A very interesting point that no one seems to have focused on is that at the time Moody's assigned their rating to the 1994 Bonds, Prager McCarthy & Sealy could have very easily and simply sold the 1994 Bonds in the secondary market and put the entire premium in their pocket. They did not do that. They came back to the College and passed through to the College some of the increase in market value. This fact was represented to the City by A.G. Edwards when the City was approached in March 1995 about restructuring the 1994 Bonds and issuing the 1995 Bonds. I have attached a copy of the March 23, 1995 letter that was sent to Michael Abels, the City of Palm Bay City Manager. Additionally, at the time of the delivery of the 1995 Bonds, in my capacity as bond counsel, I had A. G. Edwards certify that the prices at which the 1994 Bonds were being tendered back to the City represented fair market value. This certificate is contained in the bound transcript of the proceedings related to the 1995 Bonds under TAB 31, a copy of which is attached.

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In order to complete my analysis, one last piece of information needs to be discussed. At the time of the closing on the 1995 Bonds I, again in my capacity as bond counsel, requested Prager McCarthy & Sealy to prepare a letter addressed to my law firm detailing the events that had occurred with respect to the underwriting and ultimate purchase of the 1994 Bonds, their efforts to resell the 1994 Bonds and their efforts to secure the credit rating. This information was used by my prior firm in its tax analysis of the two transactions and more importantly the calculation of the yields on the two issues of bonds. A copy of this letter is also attached hereto. This letter details the great efforts that Prager McCarthy & Sealy put forth and the expenses incurred to secure a rating on the 1994 Bonds that ultimately resulted in the increased value of the 1994 Bonds. A portion of the savings was passed on to the College. Hopefully this review of the facts establishes that the amounts that were paid to Prager McCarthy & Sealy were reasonable and fair and represented arms length dealings with the College. Based on the financial information supplied to the City by A.G. Edwards at the time of each transaction bonds of each series were priced and sold at fair market value and their yields, when compared to other bonds being issued at approximately the same time, were also fair.

All of the information I have shared with you is part of the public record and verifies the fact that everything about this transaction was done with full disclosure to all the parties and independent verification by the City's independent financial advisor. Please let me know if there is any thing I can do to assist you in your preparation of the College's response to the inquiries of the Office of the Auditor General.

Sincerely,



Kenneth R. Artin

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FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

CITY OF PALM BAY, FLORIDA

\$ 9,095,000
Lease Revenue Bonds (Florida Education and
Research Foundation, Inc. Project), Series 1994 A & B

PRICING BOOK

October 6, 1994

A.G. Edwards & Sons, Inc.
INVESTMENT BANKING

JAN-06-1998 12:04 FROM AG EDWARDS TO 14078434444 P.004/007

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

A.G. Edwards & Sons, Inc.
INVESTMENT BANKING

CITY OF PALM BAY, FLORIDA

\$ 9,095,000

Lease Revenue Bonds (Florida Education and
 Research Foundation, Inc. Project), Series 1994 A & B

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Pricing Comparables	V

The City of Palm Bay, Florida

JAN-06-1998 12:05 FROM AG EDWARDS TO 14078434444 P.005/007

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

A.G. Edwards & Sons, Inc.
INVESTMENT BANKING

The Bond Buyer - October 7, 1994

Index Yields Keep Rising As the Economy Keeps Growing

By Manhew Kreps

The Bond Buyer's municipal bond indexes rose for the fifth consecutive week, putting yields at the highest levels since 1992 as fixed-income markets continued to be buffeted by reports of solid economic growth and anticipation of today's employment figures.

The 30-year revenue bond index jumped 12 basis points, to 6.82% yesterday from 6.70% a week ago. This is the highest level for the 30-bond barometer since April 30, 1992, when the index read 6.82%.

The 20-bond and 11-bond indexes of general obligation yields each rose seven basis points. The 20-bond index rose to 6.50% from 6.43%, and the 11-bond index rose to 6.41% from 6.34% last Thursday. That was the highest point either index has reached since Nov. 5, 1992, when the 20-bond index was 6.51% and the 11-bond index was 6.42%. An acute shortage of GO bonds in the market appears to have kept losses in that sector below those in revenue bonds.

During the five-week advance, the revenue bond index tacked on 39 basis points and is now 133 basis points above its 1994 low of 5.49% on Feb. 3. The 20-bond index has added 34 basis points since Sept. 1, and is now 125 basis points above its 1994 low of 5.25% on Feb. 3. The 11-bond index has gained 32 basis points since Sept. 1 and also stands 125 basis points above its 1994 low of 5.16% on Feb. 3.



The average yield to maturity of the 40 bonds used in calculating the daily Municipal Bond Index — most of them revenue bonds — rose 13 basis points, to 6.70% yesterday from 6.57% last Thursday. The yield on the Municipal Bond Index is now the highest since Oct. 29, 1992, when it was also 6.70%. The index has jumped 127 basis points since Feb. 3, when it reached this year's low of 5.43%.

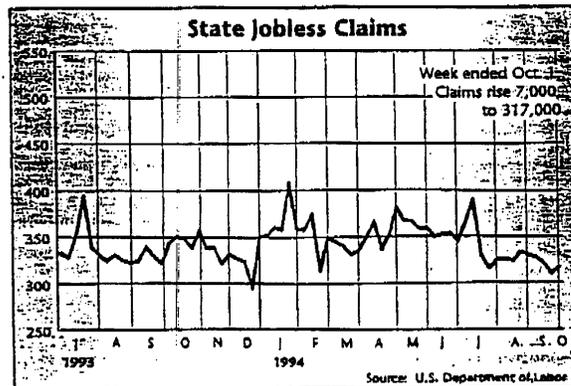
Long-term U.S. government securities outperformed the municipal revenue market, although they slipped slightly more than tax-exempt GOs. The yield on the bellwether 30-year Treasury bond rose nine basis points on the week, to 7.94% yesterday from 7.85% last Thursday. The 30-year bond yield has risen 40 basis points since Sept. 1 and stands 160 basis points above its Jan. 27 low of 6.25%.

Bond prices headed downward throughout the week, as one economic report after another indicated an economy recovering too quickly for the fixed-income markets' comfort. Rapid economic growth puts pressure on the Federal Reserve Board to raise interest rates to keep price inflation down.

Prices dropped ¼ to ½ point Monday after the National Association of Purchasing Managers reported that its manufacturing index rose 2.0 points in September. Prices declined ¼ to ½ Tuesday, following the Johnson Redbook report on retail sales, although the markets generally ignored a 0.6% jump in the index of leading indicators.

And prices plunged ¾ to one point Wednesday after the Commerce Department reported that orders for manufactured goods jumped 4.4% in August, well above the consensus expectation. Prices were mostly unchanged yesterday, despite a larger-than-expected increase in the weekly report on initial claims for unemployment benefits. The inertia was attributed to the markets' preoccupation with today's monthly employment report.

In the short end, The Bond Buyer's one-year note index rose four basis points this week to 4.14% on Wednesday from 4.10% last Wednesday. The note index is now at the highest level since July 20, when it was 4.15%. □



The City of Palm Bay, Florida

1407843444 P.006/007

TO

JAN-06-1998 12:05 FROM AG EDWARDS

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

TOTAL P. 007

AG Edwards & Sons, Inc.
INVESTMENT BANKING

THE BOND BUYER

Re: October 5, 1994

"Market Conditions on Sale Date"

KEY MARKETS			
DAILY YIELDS (in percent)			
	<u>Yesterday</u>	<u>Previous Day</u>	<u>Year Ago</u>
Municipal Bond Index	7.11	6.99	5.49
Federal Funds	4.75	4.75	2.93
3 Mo. Treasury Bills	5.08	5.07	3.02
30 Yr. Treasury Bonds	7.94	7.87	6.00

The City of Palm Bay, Florida

1407843444 P. 007/007

TO

JAN-06-1998 12:05 FROM AG EDWARDS

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

A.G. Edwards & Sons, Inc.
INVESTMENT BANKING

Bond Buyer Indexes				
Average Municipal Bond Yields - Compiled Weekly				
1994	20-Bond GO Index ¹	11-Bond GO Index ¹	25-Bond Revenue Index ²	30-Year Treasury ³
OCT 6	6.50	6.41	6.82	7.94
SEPT 29	6.43	6.34	6.70	7.85
22	6.37	6.29	6.66	7.77
15	6.24	6.16	6.51	7.63
8	6.18	6.10	6.43	7.57
1	6.16	6.09	6.43	7.45
AUG 25	6.21	6.13	6.46	7.54
18	6.22	6.14	6.46	7.49
11	6.22	6.13	6.49	7.85
4	6.16	6.08	6.37	7.40
JULY 28	6.22	6.14	6.47	7.54
21	6.22	6.13	6.46	7.54
14	6.22	6.14	6.47	7.52
7	6.27	6.19	6.52	7.57
JUNE 30	6.28	6.20	6.56	7.61
23	6.16	6.07	6.43	7.39
16	6.04	5.95	6.34	7.37
9	5.96	5.87	6.20	7.27
2	6.09	6.00	6.38	7.34
MAY 26	6.13	6.04	6.49	7.38
19	6.14	6.04	6.41	7.23
12	6.32	6.24	6.60	7.56
5	6.18	6.10	6.43	7.31
APR 28	6.16	6.07	6.42	7.26
21	6.19	6.11	6.45	7.21
14	6.22	6.14	6.50	7.29
7	6.34	6.25	6.55	7.19
MAR 30	6.07	5.99	6.39	7.09
24	5.92	5.83	6.18	6.98
17	5.84	5.76	6.06	6.81
10	5.88	5.79	6.13	6.93
3	5.84	5.76	6.07	6.82
FEB 24	5.58	5.49	5.88	6.73
17	5.42	5.33	5.64	6.54
10	5.36	5.27	5.53	6.43
3	5.25	5.16	5.49	6.30
JAN 27	5.28	5.18	5.50	6.25
20	5.29	5.20	5.54	6.26
13	5.31	5.22	5.54	6.26
6	5.34	5.25	5.56	6.34
1993				
DEC 29	5.28	5.19	5.52	6.24
22	5.34	5.25	5.58	6.21
16	5.36	5.26	5.62	6.30
9	5.33	5.23	5.53	6.14
2	5.46	5.35	5.71	6.28
NOV 24	5.49	5.38	5.74	6.30
18	5.46	5.35	5.70	6.22
10	5.46	5.36	5.69	6.20
4	5.45	5.34	5.72	6.19
OCT 28	5.31	5.21	5.58	5.95
21	5.20	5.10	5.44	5.92
14	5.20	5.11	5.41	5.84
7	5.30	5.21	5.52	6.00

October 7, 1994

	1994		1993		1992		All-Time	
20-Bond GO								
High	6.50	10/6	6.19	1/14	6.78	3/19	13.44	1/14/82
Low	5.25	2/3	5.20	10/14	5.89	7/30	1.29	2/14/46
11-Bond GO								
High	6.41	10/6	6.10	1/14	6.67	3/19	13.05	1/14/82
Low	5.16	2/3	5.10	10/21	5.80	7/30	1.04	2/21/46
25 Revenue								
High	6.82	10/6	6.44	1/7	6.87	3/19	14.32	1/14/82
Low	5.49	2/3	5.41	10/14	6.12	7/30	5.41	10/14/93

The City of Palm Bay, Florida

1407843444 P.001/008 TO AG EDWARDS FROM JAN-06-1998 12:06 866T-06-06

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

PRELIMINARY LIMITED OFFERING STATEMENT DATED SEPTEMBER 17, 1994

Subject to compliance by the issuer, FERF and Brevard Labs with certain covenants, in the opinion of Cobb Cole & Bell, Bond Counsel, under present law interest on the Series 1994A Bonds will not be includable in gross income of the owners thereof for federal income tax purposes and therefore will be exempt from present federal income taxation, except to the extent that such interest will be taken into account in computing the corporate alternative minimum tax, the alternative minimum tax and the branch profits tax. Interest on the Series 1994B Bonds will not be treated as an item of tax preference in computing the alternative minimum tax for individuals and corporations. Interest on the Series 1994B Bonds is includable in the gross income of the Owners thereof for federal tax purposes. See the copies "TAX MATTERS" herein for a more detailed discussion of some of the federal tax consequences of owning the Bonds. Bond Counsel is further of the opinion that under the laws of the State of Florida, as presently enacted and construed, the Bonds and the income thereon are exempt from taxation imposed by the State of Florida, except as to certain income and taxes imposed by Chapter 120, Florida Statutes, on corporations, as defined therein.

Cobb Cole & Bell, Inc.
INVESTMENT BANKING

NEW ISSUE
Book Entry Only

UNRATED

\$8,335,000*
CITY OF PALM BAY, FLORIDA
LEASE REVENUE BONDS
(FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC. PROJECT),
SERIES 1994A

\$140,000*
CITY OF PALM BAY, FLORIDA
TAXABLE LEASE REVENUE BONDS
(FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC. PROJECT),
SERIES 1994B

Date: September 1, 1994

Date: September 1,
 (As Shown Below)

The City of Palm Bay, Florida (the "Issuer"), is issuing its \$8,335,000* Lease Revenue Bonds (Florida Education and Research Foundation, Inc. Project), Series 1994A (the "Series 1994A Bonds") and its \$140,000* Taxable Lease Revenue Bonds (Florida Education and Research Foundation, Inc. Project), Series 1994B (the "Series 1994B Bonds") (the Series 1994A Bonds and Series 1994B Bonds, collectively, the "Bonds"), pursuant to the Act (as herein defined), a resolution of the Issuer and a Bond Indenture dated as of September 1, 1994 (the "Indenture"), between the Issuer and Sun Bank, National Association, Orlando, Florida, as trustee (the "Trustee"). The Bonds are issuable solely as fully registered bonds in denominations of \$100,000 each or any integral multiple of \$25,000 in excess thereof. Principal and the redemption price with respect to the Bonds will be payable to the registered owners upon presentation and tender at the corporate trust office of the Trustee.

Interest on the Bonds is payable by check or draft or wire transfer as provided in the Indenture semi-annually on each March 1, and September 1, commencing March 1, 1995, to the person in whose name the Bonds are registered as shown on the registration books of the Issuer maintained by the Trustee at the close of business on the 15th day of the month immediately preceding each interest payment date, except as otherwise provided in the Indenture.

The Bonds are being issued to fund a loan by the Issuer to Florida Education and Research Foundation, Inc. ("FERF"), a Florida non-for-profit corporation and direct support organization of Brevard Community College pursuant to a Loan Agreement dated as of September 1, 1994 (the "Loan Agreement") by and between the Issuer and FERF for the purpose of providing funds (i) to create and construct the Project (as defined herein), (ii) to fund the Debt Service Reserve Fund for the Bonds created under the Indenture, (iii) to maintain a portion of the interest accruing on the Bonds, and (iv) to pay the costs of issuing the Bonds. See "SOURCES AND USES OF FUNDS," "SECURITY FOR PAYMENT OF BONDS" and "THE PROJECT" herein.

The Project will be loan-purchased from FERF by Brevard Teaching and Research Laboratories, Inc. ("Brevard Labs"), a Florida non-for-profit corporation and direct support organization of Brevard Community College pursuant to a Loan-Purchase Agreement dated as of September 1, 1994 (the "Loan") by and between FERF and Brevard Labs. Pursuant to the Loan, Brevard Labs has agreed to pay Brevard Labs' Rent Payments at the times and in the amount necessary to make all payments of principal and interest due on the Bonds as and when due. The obligations of FERF under the Loan Agreement to make payments in accordance and at the times necessary to make all payments of principal and interest due on the Bonds as and when due is limited to amounts received, or deemed received in the amount such funds go directly from Brevard Labs to the Trustee, by FERF from Brevard Labs pursuant to the Loan. All rights of FERF under the Loan, other than certain indemnification and access rights, have been assigned to the Trustee for the benefit of the holders of the Bonds.

Payments of the Bonds is additionally secured by a Mortgage and Security Agreement (the "Mortgage"), from FERF to the Issuer pledging FERF's interest in the Project and other property as provided therein.

THE BONDHOLDERS LIMITED OBLIGATIONS OF THE ISSUER AND NEITHER THE STATE OF FLORIDA NOR THE ISSUER WILL BE OBLIGATED TO PAY DEBT SERVICE ON THE BONDS EXCEPT FROM REVENUES, PROCEEDS AND RECEIPTS PLEDGED UNDER THE INDENTURE. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OR A LIABILITY OF THE STATE OF FLORIDA, THE ISSUER, BREVARD COUNTY, FLORIDA, OR BREVARD COMMUNITY COLLEGE, OR A FLEDGE OF THE FAITH AND CREDIT OF THE STATE OF FLORIDA, THE ISSUER, BREVARD COUNTY, FLORIDA, OR BREVARD COMMUNITY COLLEGE BUT SHALL BE PAYABLE SOLELY FROM THE PLEDGED REVENUES AND RECEIPTS PLEDGED UNDER THE INDENTURE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THE BONDS. THE ISSUANCE OF THE BONDS SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATSOEVER THEREFOR OR TO MAKE ANY APPROPRIATION THEREFOR.

The Bonds are subject to optional, extraordinary and mandatory redemption prior to maturity as provided herein. See "THE BONDS - Redemption Provisions" herein.

THE BONDS ARE SPECULATIVE IN NATURE AND SHOULD BE PURCHASED ONLY BY SOPHISTICATED INVESTORS. THE PROSPECTIVE INVESTOR SHOULD BE AWARE OF CERTAIN RISK FACTORS ANY ONE OF WHICH IF IT MATERIALIZED TO A SUFFICIENT DEGREE, COULD DELAY OR PREVENT PAYMENT OF PRINCIPAL AND/OR INTEREST ON THE BONDS. THIS LIMITED OFFERING STATEMENT, INCLUDING ALL APPENDICES, SHOULD BE READ IN ITS ENTIRETY. SEE "BONDHOLDERS' RISKS" FOR A SUMMARY OF CERTAIN RISKS ASSOCIATED WITH THE BONDS.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. ANY PURCHASE OF THE BONDS SHOULD BE FOR INVESTMENT AND NOT WITH THE INTENT TO EFFECT A DISTRIBUTION OR RESALE OF THE BONDS.

AMOUNT, INTEREST RATE, MATURITY AND PRICE

This cover page contains certain information for quick reference only. It is not a summary of the issue. Investors must read the entire Preliminary Limited Offering Statement to obtain information essential to the making of an informed investment decision.

The Bonds are offered when, as and if issued by the issuer and accepted by the Underwriter, subject to prior sale or withdrawal or modification of the offer without notice and subject to the approval of the legality of the Bonds by Cobb Cole & Bell, Daytona Beach, Florida, Bond Counsel. Certain legal matters will be passed upon for the Issuer by its counsel Nicholas F. Thompson, Esq., Palm Bay, Florida, for the Underwriter by its counsel Maguire, Voshell & Wells, P.A., for FERF by its counsel Richard Bonner, Esquire, Tallahassee, Florida, and for Brevard Labs by its counsel Roberts and Egan, Tallahassee, Florida.

PRAGER, McARTHUR & SEALY

Date: September __, 1994
 *Preliminary, subject to change.

1407844444 P.002/008 TO FROM PG EDWARDS 12:27:06 JAN-96-1998

This Preliminary Limited Offering Statement is subject to change without notice and to amendment and completion in a final Limited Offering Statement. Under no circumstances shall this Preliminary Limited Offering Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any indication as to any jurisdiction in which such offer, solicitation or sale would be authorized under registration or qualification under the applicable securities laws of such jurisdiction. Indentures of interest with respect to investment in the Bonds are available and can be obtained on the Issuer's website.

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

A.G. Edwards & Sons, Inc.
INVESTMENT BANKING

CITY OF PALM BAY, FLORIDA

CITY COUNCIL

Melton E. Broom, Mayor
Jim Greer, Deputy Mayor

Rick Conner
Council Member

John J. Mazziotti
Council Member

Hank Simon
Council Member

ADMINISTRATION

Michael Abels
City Manager

James H. Demming
Finance Director

Nicholas Tsamoutales, Esq.
City Attorney

BOND COUNSEL

Cobb Cole & Bell
Daytona Beach, Florida

BORROWER

Florida Education & Research Foundation, Inc.
Palm Bay, Florida

Tom Adams
President

Gwendolyn DeCourt
Executive Director

DEVELOPER

Educational Facilities Group, Inc.
Palm Bay, Florida

Thomas Proctor
President

Robbie Browning
Vice President

FINANCIAL ADVISOR

A.G. Edwards & Sons, Inc.
Tampa, Florida

The City of Palm Bay, Florida

14078434444 P.003/008

TO

JAN-06-1998 12:07 FROM AG EDWARDS

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

A.G. Edwards & Sons, Inc.
INVESTMENT BANKING

CITY OF PALM BAY, FLORIDA
Final Structure

- * The issue size is \$9,095,000.
- * The \$8,955,000 Series 1994 A bond yield is 8.20%, matures in 2024 and is tax-exempt.
- * The \$140,000 Series 1994 B bond yield is 9.25%, matures in 1996 and is taxable.
- * The Series A bond proceeds will be used to build a 35,000 square foot laboratory, classroom, administration and ancillary support space.
- * The Series B bond proceeds will be used to pay issuance costs and capitalized interest.
- * The Net Interest Cost is 10.77%.
- * The bonds are callable in 2004 at 102.
- * The final maturity of the issue is September 1, 2024.
- * Issuance and underwriting costs are summarized on the next page.
- * The bonds were marketed during a two week period beginning September 19, 1994.
- * The closing dates were October 5 and October 6.

The City of Palm Bay, Florida

14078434444 P.004/008

TO

JAN-06-1998 12:07 FROM AG EDWARDS

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

A.G. Edwards & Sons, Inc.
INVESTMENT BANKING

CITY OF PALM BAY, FLORIDA
Summary of Issuance Expenses

Role	Company	Fee
Bond Counsel	Cobb Cole & Bell	\$55,000
Underwriter's Counsel	Maguire Voorhis & Wells	30,000
City Attorney	Nick Tsamoultes	5,000
Trustee	SunBank Trust	7,000
Trustee's Counsel	Squire Sanders & Dempsey	3,000
Printing Official Statement	Allied	2,500
Financial Advisor	A.G. Edwards	17,376
Miscellaneous	FERF	124
TOTAL		\$120,000

Underwriter's Fee = \$20.00 per \$1,000 Par Amount
 \$9,095,000 Par Amount = 9,095 X 20 = \$181,900

The City of Palm Bay, Florida _____

14078434444 P.005/001

TO

JAN-06-1998 12:27 FROM AG EDWARDS

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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A.G. Edwards & Sons, Inc.
INVESTMENT BANKING

CITY OF PALM BAY, FLORIDA
Lease Revenue Bonds, Series 1994 A & B

DEBT SERVICE SCHEDULE

DATE	PRINCIPAL	COUPON	INTEREST	PERIOD TOTAL	FISCAL TOTAL
9/ 1/95	65,000.00		647,086.46	712,086.46	712,086.46
9/ 1/96	90,000.00		700,387.50	790,387.50	790,387.50
9/ 1/97	100,000.00		692,850.00	792,850.00	792,850.00
9/ 1/98	105,000.00		685,100.00	790,100.00	790,100.00
9/ 1/99	115,000.00		676,962.50	791,962.50	791,962.50
9/ 1/ 0	120,000.00		668,050.00	788,050.00	788,050.00
9/ 1/ 1	130,000.00		658,750.00	788,750.00	788,750.00
9/ 1/ 2	140,000.00		648,675.00	788,675.00	788,675.00
9/ 1/ 3	155,000.00		637,825.00	792,825.00	792,825.00
9/ 1/ 4	165,000.00		625,812.50	790,812.50	790,812.50
9/ 1/ 5	175,000.00		613,025.00	788,025.00	788,025.00
9/ 1/ 6	190,000.00		599,462.50	789,462.50	789,462.50
9/ 1/ 7	205,000.00		584,737.50	789,737.50	789,737.50
9/ 1/ 8	220,000.00		568,850.00	788,850.00	788,850.00
9/ 1/ 9	240,000.00		551,800.00	791,800.00	791,800.00
9/ 1/10	260,000.00		533,200.00	793,200.00	793,200.00
9/ 1/11	280,000.00		513,050.00	793,050.00	793,050.00
9/ 1/12	300,000.00		491,350.00	791,350.00	791,350.00
9/ 1/13	325,000.00		468,100.00	793,100.00	793,100.00
9/ 1/14	350,000.00		442,912.50	792,912.50	792,912.50
9/ 1/15	375,000.00		415,787.50	790,787.50	790,787.50
9/ 1/16	405,000.00		386,725.00	791,725.00	791,725.00
9/ 1/17	435,000.00		355,337.50	790,337.50	790,337.50
9/ 1/18	470,000.00		321,625.00	791,625.00	791,625.00
9/ 1/19	505,000.00		285,200.00	790,200.00	790,200.00
9/ 1/20	545,000.00		246,062.50	791,062.50	791,062.50
9/ 1/21	585,000.00		203,825.00	788,825.00	788,825.00
9/ 1/22	630,000.00		158,487.50	788,487.50	788,487.50
9/ 1/23	680,000.00		109,662.50	789,662.50	789,662.50
9/ 1/24	735,000.00		56,962.50	791,962.50	791,962.50
	9,095,000.00		14,547,661.46	23,642,661.46	
ACCRUED			9,804.34	9,804.34	
	9,095,000.00		14,537,857.12	23,632,857.12	

The City of Palm Bay, Florida

14078434444 P.0006/008 TO AG EDWARDS FROM 12:07 98 JAN-06-1998

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

A.G. Edwards & Sons, Inc.
INVESTMENT BANKING

CITY OF PALM BAY, FLORIDA
Lease Revenue Bonds, Series 1994

SOURCES AND USES OF FUNDS
Series A

Sources of Funds

Par Amount of Bonds.....	\$8,955,000.00	
+Premium /-Discount.....	-\$48,108.20	
Bond Proceeds.....		8,506,891.80
Accrued Interest.....		9,639.06
		\$8,516,530.86

Uses of Funds

Cost of Real Estate Closing.....		57,000.00
Cost of Issuance.....(2.000000%)..		179,100.00
Accrued Interest.....		9,639.06
Capitalized Interest.....		623,843.80
Debt Service Reserve.....		793,200.00
Net Construction Fund Amount.....		6,850,762.70
Contingency.....		2,985.30
		\$8,516,530.86

SOURCES AND USES OF FUNDS
Series B

Sources of Funds

Par Amount of Bonds.....	\$140,000.00	
+Premium /-Discount.....	-\$1,815.80	
Bond Proceeds.....		138,184.20
Accrued Interest.....		165.28
		\$138,349.48

Uses of Funds

Underwriter's Discount.....(2.000000%)..		2,800.00
Cost of Issuance.....		120,000.00
Accrued Interest.....		165.28
Capitalized Interest.....		11,037.37
Contingency.....		4,346.83
		\$138,349.48

407
432-5164

The City of Palm Bay, Florida

1407843444 P.007/008

TO

JAN-06-1998 12:07 FROM AG EDWARDS

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

TOTAL P.008

A.G. Edwards & Sons, Inc.
INVESTMENT BANKING

CITY OF PALM BAY, FLORIDA
Lease Revenue Bonds, Series 1994 A & B

PRICING COMPARABLES

	CITY OF PALM BAY \$9,095,000 Lease Revenue Bonds Non-Rated Pricing Date: 10-06-94 Call Date: 9 yrs @ 102	Northern Palm Beach Water Control District \$ 4,045,000 Water Control & Improvement Non-Rated Pricing Date: 09-28-94 Call Date: 9 yrs @ 102
<u>MATURITIES</u>	<u>YIELDS %</u>	<u>YIELDS %</u>
1995		5.00%
1996		5.30%
1997	9.25% (1)	5.50%
1998		5.60%
1999		5.75%
2000		5.85%
2001		6.00%
2002		6.15%
2003		6.30%
2004		6.50%
2005		6.60%
2006		
2007		
2008		
2009		
2010		
2011		
2012		
2013		
2014		
2015		7.25% (2)
2016		
2017		
2018		
2019		
2020		
2021		
2022		
2023		
2024	8.20% (2)	

(1) TAXABLE BONDS
 (2) TERM BONDS

The City of Palm Bay, Florida

JAN-RN-06-1998 12:08 FROM AG EDWARDS TO 14078434444 P.008/008

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
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A.G. Edwards & Sons, Inc.
INVESTMENT BANKING

500 North Westshore Boulevard
Suite 740
Tampa, Florida 33609
(813) 286-0310

March 23, 1995

Michael L. Abels
City Manager
City of Palm Bay
120 Malabar Road South East
Palm Bay, Florida 32907-3009

Dear Mr. Abels:

A.G. Edwards has reviewed the preliminary analysis and bond structure for the proposed refinancing of the \$8,955,000 City of Palm Bay, Florida Lease Revenue Bonds, Series 1994A. Our analysis is in agreement with the numbers put forth by the underwriter, Prager, McCarthy & Sealy (PM&S). The refunding plan calls for the City to issue bonds whose proceeds will be used to tender all of the outstanding bonds which are currently held by PM&S.

The refunding is being undertaken for debt service savings for Brevard Labs. PM&S, at its own expense, engaged Moody's Investor's Service and Standard & Poor's Corporation to give the bonds rating indicators. Working with Brevard Community College and Moody's, an investment-grade rating of "Baa" was achieved. Although the City's own credit rating is not affected by this issue, this investment grade rating should be of comfort to the City as the issue's security has been strengthened significantly and the risk of default has been lessened.

Because of the Moody's rating and the current interest rate environment, adequate savings may be achieved through a re-issuance of the bonds. A straight-forward advance refunding would not result in adequate savings under current market conditions.

The issue's structure will give Brevard Labs debt service relief in the early years by providing lower debt service payments and depositing \$100,000 into the debt service fund at closing from re-issuance proceeds. This deposit will be used to pay debt service on the taxable Series 1994B bonds which are not being refunded. The present value savings currently available to the College is approximately \$488,000 or 5.4% of the refunded par amount.

The re-issuance of the bonds preserves the right to advance refund the issue at a later date should market conditions allow. This is possible because PM&S has agreed to waive its ten-year call protection. PM&S and Brevard Community College have negotiated a tender price of 103% of the par amount which equals \$9,223,650 for the bonds. PM&S originally purchased the bonds for \$8,506,891.80. PM&S will receive \$716,758.20 of which \$448,108.20 is the original issue discount of the Series 1994A bonds; \$32,000 will be used to pay the rating fees, and the rest is price appreciation that compensates PM&S for their capital risk on the original issue and for their underwriting fee on the 1995A bonds. This 103% price is below the 105% current market value of the bonds. PM&S is allowing some of the price appreciation to pass through as savings to Brevard Labs because of the actions Brevard Community College took to strengthen the credit of the issue and earn the rating.

14078434444 P. 02/2/05

TO

JAN-07-1998 12:46 FROM AG EDWARDS

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

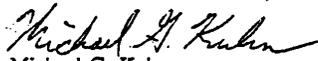
Michael L. Abels
City of Palm Bay
March 23, 1995
Continuation Page 2

A.G. Edwards & Sons, Inc.
INVESTMENT BANKING

The market is currently favorable and the financing team is working to get the documents in order as quickly as possible to achieve the savings for the College. We have been reviewing the documents and the City's staff has received them also. The documents may be amended after their passage should the City require any changes. A.G. Edwards recommends the City proceed with the financing and pass the required resolutions. Should you have any questions or comments please call me at 800/289-2405.

Sincerely,

A.G. EDWARDS & SONS, INC.


Michael G. Kuhn
Vice President
Investment Banking

14078434444 P.003/005

TO

JAN-07-1998 12:47 FROM AG EDWARDS

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
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CERTIFICATE OF MARKET PRICE OF BONDS

The undersigned, a representative of A.G. Edwards & Sons, Inc., and financial advisor to the City of Palm Bay, Florida with respect to the current refunding of the City's Lease Revenue Refunding Bonds, (Florida Education and Research Foundation, Inc. Project), Series 1994A (the "Bonds") hereby certifies as follows:

1. We are familiar with bonds similar to the Bonds and the price and/or yield of such obligations on April 6, 1995; and

2. The price being paid by the City to acquire the Bonds being tendered on April 19, 1995 by Prager McCarthy & Sealy, the current owners of the Bonds, equal to \$9,223,650 (representing the \$8,955,000 principal amount of the Bonds plus a premium equal to \$268,650) is equal to or below the market price of the Bonds on April 6, 1995.

A.G. EDWARDS & SONS, INC.

By: Michael A. Huber

Its: Vice President - Investment Banking

14078434444 P.004/005

TO

JAN-07-1998 12:47 FROM AG EDWARDS

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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TOTAL P.005

Impact of Tender Yield on Tender Price			
Yield	Cash-Flow to	Approx. Price	
7.00%	Call on 9/1/2004 @ 102	105.83	+ Accrued
7.25%	Call on 9/1/2004 @ 102	104.13	+ Accrued
7.42%	Call on 9/1/2004 @ 102	103.00	+ Accrued
7.50%	Call on 9/1/2004 @ 102	102.46	+ Accrued
7.88%	Call on 9/1/2004 @ 102	100.00	+ Accrued

1407843444 P.005/005

TO

JAN-07-1998 12:47 FROM AG EDWARDS

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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STATEMENTS FROM AUDITED OFFICIALS
For the Period June 10, 1991, Through June 30, 1997

PRAGER, MCCARTHY & SEALY

INVESTMENT BANKERS

April 19, 1995

Kenneth Artin, Esq.
Cobb, Cole & Bell
150 Magnolia Avenue
Daytona Beach, FL 32114

Dear Ken:

You have asked me, on behalf of the firm of PRAGER, MCCARTHY & SEALY ("PM&S"), to detail our initial purchase of and investment in the \$8,955,000 City of Palm Bay, Florida, Lease Revenue Bonds, Series 1994A (Florida Education and Research Foundation, Inc. Project) (the "Bonds"). PM&S initially underwrote the Bonds on October 6, 1994, with the intent to sell and redeliver the Bonds to one institutional investor within several weeks of our initial purchase. We had conducted an extensive site visit with this institutional investor, organized a number of in-depth conference calls, assembled and provided follow-up information, and had worked with the outside counsel that this institutional investor had hired at its own expense. We were told by this institutional investor approximately one to two weeks prior to the October 6 closing date that we could feel comfortable in discontinuing all discussions with any other investors, but that they might not be able to meet our closing date. We also had preliminary pricing conversations which gave us an indication of interest rate. Based upon these representations, our firm honored our commitment to provide bond funds by the October 6 date.

Although PM&S has in the past underwritten unrated bonds, we have done this very selectively, marketing these securities to selected accredited investors and additionally preferring to have a buyer in which to redeliver the bonds simultaneously at the closing. However, the Brevard Teaching and Research Laboratories, Inc. ("Brevard Labs" or the "Lessee") and Brevard Community College ("BCC" or the "College") desired to have funds in order to begin the construction process and have the facility ready for occupancy by the 1995-96 school year. In a desire to meet this schedule, we were only instructed to talk to institutional investors who we believed could purchase the Bonds quickly. The timing did not allow for the extensive process involved in securing a rating or in obtaining bond insurance. Also, the rating and insurance processes are expensive undertakings and funds were not readily available for this purpose, particularly as we could not give any assurances as to the results of these

200 SOUTH ORANGE AVENUE SUITE 1900 ORLANDO FLORIDA 32801 TEL 407 481 9182 FAX 407 849 1496

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
AND
BREVARD TEACHING AND RESEARCH LABORATORIES, INC.
STATEMENTS FROM AUDITED OFFICIALS
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PRAGER, MCCARTHY & SEALY

INVESTMENT BANKERS

Kenneth Artin, Esq.
April 19, 1995
Page 2

efforts. While PM&S believed in the credit, there had been to our knowledge no other transaction of this sort in the State of Florida that had obtained a rating. Our indicator with the major institutional investor led us to underwrite the Bonds at the original interest of rate which was 7.75% at a dollar price of 94.996 to yield 8.25%, and we expected to redeliver the Bonds to them at this same price in the weeks after the closing.

Approximately one week after the October 6, 1994, closing date, the institutional investor referenced in the first paragraph declined to purchase the Bonds, and PM&S was left holding the Bonds in our inventory. We immediately began discussions with several other institutional investors, conducted site visits, and also engaged once again a potential investor who had previously visited the site, but had been told there were no Bonds available for purchase. This process took several weeks and in this time, the market moved against us and the Bonds were not marketable at the original interest rates. Also, discussions lagged with the institutions; given that documents were already executed, as well as the interest rate climate, there was little we could do at this time to restructure the Bonds.

It was at this point that PM&S began to explore bond insurance and the ratings process. In light of the time and money that was to be invested in such a process, we moved the Bonds out of our trading inventory and into our own investment account on our books. At our own expense, we engaged S&P to give a ratings indicator for a fee of approximately \$6,500. They visited BCC and Brevard Labs on Monday, October 31, 1994, after which time we continued to work with them for approximately two weeks, until their determination that they could not give the Bonds, as presently structured, an investment grade rating.

We then continued our discussions with bond insurers, who declined to insure the Bonds, and we also engaged Moody's Investor's Service to give a ratings indicator for the Bonds. Moody's representatives toured the site and visited BCC on Monday, November 21, and Tuesday, November 22, 1994. Again, PM&S agreed to pay at its own expense an indicator fee of approximately \$9,500. Conversations with Moody's continued throughout December as we provided follow-up information and organized conference calls to discuss the credit. At the end of December, Moody's came back to our firm and told us that they would not be able to give an

SAN FRANCISCO BOSTON LOS ANGELES NEW YORK ORLANDO SEATTLE

EXHIBIT - F (Continued)
FLORIDA EDUCATION AND RESEARCH FOUNDATION, INC.
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PRAGER, MCCARTHY & SEALY

INVESTMENT BANKERS

Kenneth Artin, Esq.
April 19, 1995
Page 3

investment grade rating to the Bonds without a better tie to BCC. They suggested that a resolution of the Board of Trustees of BCC be adopted which covenanted to appropriate on an annual basis an amount necessary to meet debt service on the Bonds, which was essentially a major change in the entire structure of the original financing.

PM&S talked to BCC about the possibility of adopting such a resolution. We worked with Moody's and BCC throughout much of January to help draft a resolution that would meet Moody's approval. While no written agreements were made, the one assurance that I had given BCC was that as the original bondholder, our firm would upon receipt of an investment grade rating, do everything in our power to refund the Bonds at a tender price that would pass some savings on to BCC and Brevard Labs. On January 23, 1995, this draft resolution was presented to BCC's Board of Trustees and was passed unanimously. After the receipt of an enforceability opinion in early February, and its submission to Moody's, we awaited Moody's response. On February 10, 1995, we received word that an investment grade rating of Baa would be applied to the Bonds.

At this point, without a refunding of the Bonds, the only option that we had as the original purchaser of the Bonds was to sell the Bonds in the secondary market with the rating, which would make them worth more than their original purchase price. While this would have been simpler for PM&S, we had made a commitment that we would try to pass some of the savings on to BCC and Brevard Labs. The only way to accomplish this was to refund the Bonds at new interest rates which were indicative of the Baa rating. Thus, we began the current process, which involved going back to the conduit issuer, the City of Palm Bay, and getting a refunding bond issue approved. This long and involved process culminated in the April 5th pricing and April 19th closing of the Series 1995A refunding bonds, in which PM&S agreed to waive its 10-year option call protection in exchange for a call premium of 103%.

During the over six months that we held the Bonds, we were the bondholder of record, and received a tax-exempt coupon payment on March 1, 1995 for our own account. PM&S's absorption of fees for rating agency due diligence, and its structuring of the current transaction, inclusive of its waiver of call protection and creation of savings for Brevard

SAN FRANCISCO BOSTON LOS ANGELES NEW YORK ORLANDO SEATTLE

EXHIBIT - F (Continued)
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PRAGER, MCCARTHY & SEALY

INVESTMENT BANKERS

Kenneth Artin, Esq.
April 19, 1995
Page 4

Labs, are all indicative of true ownership of these Bonds. You should also note that these Bonds were retained by PM&S during much of this period in the firm's own investment account.

While this transaction did not go exactly as planned (i.e. ownership by PM&S for an extended period of time rather than an immediate underwriting), we believe the results have been beneficial to all parties, in particular Brevard Labs through its significant debt service savings. The foregoing attempts to summarize the events described therein, but does not attempt to list every detail or occurrence in connection with the Bonds or their refunding.

Please feel free to call me with any questions or comments.

Sincerely,
PRAGER, MCCARTHY & SEALY



Ann R. Eppinger
Managing Director

SAN FRANCISCO BOSTON LOS ANGELES NEW YORK ORLANDO SEATTLE